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THE
MISCELLANEOUS DOCUMENTS

OF THE
SENATE OF THE UNITED STATES

FOR THE
SECOND SESSION OF THE FIFTY-THIRD CONGRESS.

1893-'94.

IN TWELVE VOLUMES.

- Volume 1.—Nos. 1 to 103, inclusive, except Nos. 10 and 12.
Volume 2.—No. 10, Seventh Annual Report Interstate Commerce Commission.
Volume 3.—No. 12, Congressional Directory.
Volume 4.—No. 104, Annual Report of the American Historical Association.
Volume 5.—Nos. 105 to 276, inclusive, except Nos. 122, 127, 178, 200, 266, and 274.
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D I G E S T
OF
DECISIONS AND PRECEDENTS
OF THE
SENATE AND HOUSE OF REPRESENTATIVES
OF THE
UNITED STATES,
RELATING TO THEIR
POWERS AND PRIVILEGES RESPECTING THEIR MEMBERS AND OFFICERS,
AND TO
INVESTIGATIONS, CONTEMPTS, LIBELS, CONTUMACIOUS WITNESSES,
EXPULSIONS, WRITS OF HABEAS CORPUS, ETC., WITH DE-
CISIONS OF THE U. S. SUPREME COURT AND
OTHER COURTS RELATING THERETO.

COMPILED, EDITED, AND INDEXED BY

HENRY H. SMITH,

*Clerk to the Senate Special Committee to Investigate Attempts at Bribery, etc.,
under the resolutions of May 17, 19, and 28, and August 16, 1894.*

AUGUST 16, 1894.—Reported by Mr. GRAY from the Special Committee to Investigate Attempts at Bribery, etc., and ordered to be printed.
(See Senate report No. 606, Fifty-third Congress, Second session.)

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GOVERNMENT PRINTING OFFICE,
1894.

FIFTY-THIRD CONGRESS, SECOND SESSION.

IN THE SENATE OF THE UNITED STATES,
May 17, 1894.

The Senate adopted the following preamble and resolutions:

"Whereas it has been stated in *The Sun*, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and

"Whereas it has also been stated in a signed article in *The Press*, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party: Therefore,

"*Resolved*, That a committee of five Senators be appointed to investigate these charges and to inquire further whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes or to secure or defeat legislation, and whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate, and with power to send for persons and papers and to administer oaths.

"*Resolved further*, That said committee be authorized to investigate and report upon any charge or charges which may be filed before it alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation."

The Vice-President appointed Senators Gray, Lindsay, Lodge, Davis, and Allen as the said committee.

Attest:

WM. R. COX, *Secretary*.

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P R E F A C E .

It seems proper that a brief statement should be made in respect to the general character and scope of this compilation, as well as to give the reasons for the delay attending its publication.

The resolutions adopted by the Senate on May 17, 1894, creating the special committee, were based upon publications and charges appearing in two leading and responsible journals of the country, affecting not only the personal and official integrity of individual Senators specifically named, but directly, or by implication, the entire membership of the Senate.

No publications—save those in 1872, affecting the integrity of the then Vice-President of the United States, the Speaker of the House of Representatives, several Senators and Representatives, and the Secretary of the Treasury, which led to what is commonly known as the “Credit Mobilier investigation” by two select committees of the House of Representatives during one session of Congress—of such a sweeping and comprehensive character had ever before been made. The publications in the *Aurora*, or *General Advertiser* (see case of William Duane, p. 7), and in *The Daily Times*, of Washington, D. C. (p. 45), and in other cases of minor importance, only attacked or questioned the integrity of certain members who were either directly named or identified by innuendo; but the publications first referred to, as well as others of a similar character appearing in the press generally, not only, as stated, affected the integrity of the Senators named, but, in effect, were a general indictment of all the members of the Senate, by charges that corrupt and improper means had been resorted to by the managers of one of the great political parties of the day to elect Senators of their own political faith, as well as their candidate for President of the United States; and that the managers of a great corporation had contributed money, not only for campaign or election purposes, but “to secure or defeat” certain proposed tariff legislation; the committee being directed by said resolutions to inquire into and report upon these various charges, and whether “any Senator has been corruptly or improperly influenced in the consideration of said bill, or any attempt has been made to so influence legislation.”

In view of the character of those charges and the general scope of the resolutions, the committee decided that all the leading cases or precedents of the two houses of Congress should be compiled and examined for its information and use, and that of the Senate, and finally, that it should be printed for future reference by members of succeeding Congresses, and on August 16 last, the Senate ordered the said compilation to be printed as recommended by the special committee.

The work was commenced during the progress of the investigation by the special committee, and its scope so extended subsequently, as to embrace or include the more important judicial decisions touching the questions involved. Its publication has been delayed in order to secure and incorporate the proceedings in, and decisions of the Supreme Court and Court of Appeals of the District of Columbia, and, finally, the decision of the Supreme Court of the United States, in the matter of the application of two of the contumacious witnesses—Messrs. Chapman and Shriver—for leave to file a petition for a writ of habeas corpus, based upon the ground that the statute under which the indictments against them were found, was unconstitutional, and therefore void.

The plan indicated has been faithfully carried out and the work completed. In addition to a very full and elaborate general index—both individual and subject—a carefully prepared and comprehensive “table of contents” has been inserted, together with a complete list or table of judicial decisions cited—whether by counsel or the court—in the cases included in full herein. These cases are recognized as the “leading American cases,” by the bench and bar of the United States, as well as of England, and are believed to cover every phase of the questions raised as to the powers and privileges of Congress, or of either house thereof in respect to the subjects and questions herein and the extent to which they are defined by the Constitution or protected by statute, and the liberty of the press respecting those privileges.

In addition to the foregoing table of cases cited, there has been added a table of constitutions, statutes, and text-writers cited (p. 383–932), either by counsel or the court, which table has been most carefully compiled, digested, and verified, many errors in official publications having been corrected and every possible precaution taken to have it absolutely correct. An examination of this table by those interested in the subject, will fully demonstrate its value and importance as well as accuracy.

It was found impossible to make even an abstract that would properly present the arguments made in the Senate in March, 1800, in the case of William Duane, and in the Tenth Congress (1807–8), in the case of John Smith, a Senator from Ohio (which see, p. 19)—extending over a period of over four months—in respect to the constitutional powers of the Senate. Full references have been made, however, to the debates thereon as found in the Annals of Congress, though they are but partially given, and only indexed under the name of the member. In

addition, a list of reports of the select and special committees of both houses of Congress is given, in many of which, questions respecting the power of committees and of the two houses, in regard to recusant or contumacious witnesses, are discussed or stated.

An examination of the earlier cases in Congress, discloses the fact that the forms and methods observed in the English Parliament—both branches—were adopted and followed, preference being given to the practice of the House of Lords, in which witnesses were sworn and their evidence given under oath in open session, while in the House of Commons they were not sworn, except during the brief period of the commonwealth. “Why,” says May (p. 313), “the power of administering oaths, which by the laws of England has been considered essential to the discovery of truth, and which must have been inherent in the high court of Parliament, has been retained by one branch of it and severed from the other, can not now be satisfactorily established. The two houses in the course of centuries have appropriated to themselves different kinds of judicature, but the one has exercised the right of administering oaths without question, while the other, except as already mentioned, has never yet asserted it.”

This distinction between the two houses of Congress has never been asserted in favor of the Senate, while, though a continuing body—unlike the House of Representatives—it has decided that it has no power to punish a contumacious witness or an offender against its privileges, by imprisonment beyond the expiration of the pending session, as did the House of Representatives in the case of Patrick Woods (p. 305). The debates in the Senate in the Forty-second Congress in the cases of the contumacious witnesses White and Ramsdell (see “Treaty of Washington”) and votes taken thereon, are conclusive of the Senate’s position in this regard.

That case stands alone in the history of Congress, and the power therein asserted has not only since been denied and rejected by the House of Representatives, but by the courts as well. The decision of the court of appeals of the State of New York in the important case of “The People *ex rel.* William McDonald, respondent, *v.* William H. Keeler, as sheriff, etc., appellant” (p. 730), is directly to the point. The concluding paragraph of that decision (by Judge Rapallo, p. 743), states that “the order of the general term should be reversed, and that of the court of oyer and terminer affirmed, except in so far as it remands the relator to the custody of the sheriff, *the term of his imprisonment having ended with the session of the legislature.*”

The appointment of a special committee by the House of Representatives in the case of Robert Randall (p. 3), the first arising in either House, “to report a mode of proceedings,” was followed by the Senate in the case of William Duane (p. 7), and the forms and methods then adopted were substantially followed in both houses of Congress until the passage of the act of January 24, 1857—now chapter seven of the

Revised Statutes—under which act John W. Wolcott was certified by the Speaker of the House of Representatives to the District Attorney for the District of Columbia, the provisions of the act of January 24, 1857, being also followed in the cases of Irwin and Kilbourn.

In view of the extended discussion in the Senate in the Forty-second Congress, in which nearly every member participated, as to the powers of that body in respect to the contumacious witnesses—White and Ramsdell—growing out of the premature publication in the New York Tribune of the “Treaty of Washington,” and the many important decisions and precedents therein cited and made, most of the debate has been given in full. The proceedings of, and debate in, both Houses of Congress, attending the passage of the act of January 24, 1857, “more effectually to enforce the attendance of witnesses and compel them to discover testimony,” by the Thirty-fourth Congress, as showing the construction or interpretation of its provisions intended by its framers, are given in full, together with full details and particulars in the case of John W. Wolcott, the first contumacious witness certified to the district attorney of the District of Columbia under that act (now chapter 7 of the Revised Statutes).

The proceedings in the supreme court of the District of Columbia—including the presentment, indictment, affidavit and docket entries—are given, from which it appears that, in order to escape punishment, Wolcott forfeited his recognizance, and that a *nolle prosequi* was entered by the United States district attorney upon the payment of the bond (\$1,000) and the costs of suit.

All the important questions raised in, and decided by, either house of Congress in the several cases included herein, are summarized in the preliminary statement made as to each case. These decisions, though not entirely uniform, considered in connection with the decisions of the Supreme Court of the United States in the cases of *Anderson v. Dunn* (p. 588); *Kilbourn v. Thompson* (p. 708); *Counselman v. Hitchcock* (p. 744), and *Interstate Commerce Commission v. Brimson* (p. 764); its recent decision denying the applications of the contumacious witnesses, Chapman and Shriver, for leave to file a petition for the issuance of a writ of habeas corpus, on the ground that the statute under which they were indicted was unconstitutional and therefore void; the decisions of five United States courts in the cases of *Nugent v. Beale* (p. 601); *Pacific Railway Commission in re Leland Stanford* (p. 621); *The United States v. James* (p. 789); *The United States v. Chapman, Macartney, Seymour, Edwards, Shriver, Searles, and Havemeyer* (pp. 805–811 and 854–857), the Court of Appeals of the District of Columbia in the case of *The United States v. Chapman and Macartney* (p. 822), and the Court of Appeals of the State of New York in the case of *The People ex rel. McDonald, respondent, v. Keeler, as sheriff, etc., appellant*—in connection with the cases cited by counsel and the court therein, which fully appear in the “Table of Cases. Constitutions, Statutes, and Text

Writers Cited, etc." (pp. 883-932)—are believed to cover the entire ground.

The question as to whether the Senate (or House of Representatives) was bound to follow the principles of a court of law, or whether its proceedings should be regulated and governed by its own judgment and discretion, as occasion required, raised in both the House and Senate—in the cases, respectively, of Robert Randall and William Duane—was reviewed and fully discussed in the debates in the Senate on the case of John Smith, a Senator from Ohio, whose expulsion from the Senate was proposed, "in consequence of the part which he took in the conspiracy of Aaron Burr against the peace and prosperity of the United States," etc., and was also discussed in the unanimous report recommending his expulsion, made by John Quincy Adams from the select committee appointed to inquire "whether it be compatible with the honor and privileges of this House that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein." That question has been raised in most of the various committees of investigation from that time to the present, though the decisions have been uniform by such committees, as well as by the two Houses of Congress, that they were not bound to follow the principles and precedents of courts of law in conducting such investigations.

In addition to the elaborate briefs and arguments submitted by John A. Andrew and S. E. Sewall in the case of Theodore Hyatt (pp. 278-292), and by Reverdy Johnson and James M. Keith in the case of John W. Wolcott (pp. 253-957), in support of the propositions "that the power to coerce testimony, though constitutionally within the range of the judiciary branch of the Government in the discharge of its duties of administering justice, is not within the range of the legislative branch of Government as a power incident to legislation, and that the judiciary itself, though clothed with power to coerce inquiry, is limited and controlled in the exercise of the function by both reason and the Constitution," and that Congress "is restricted by the Constitution to certain defined limits in respect to its power to punish a witness or other party for contempt," briefs of other distinguished counsel in other cases, including that of Jeremiah S. Black, in the case of Hallett Kilbourn (p. 539) are given and of Samuel Shellabarger, in the case of Richard B. Irwin (p. 523), upon the general subject of the powers of Congress, or either house, or of committees thereof, in respect to witnesses or other persons held to be in contempt.

In view of the important questions involved in the cases growing out of the investigation and reports made by the special committee under the resolution of the Senate of May 17, 1894, the indictment of Chapman is given in full—the others being substantially identical—together with the demurrer thereto, as well as the demurrers and briefs in the

cases of Messrs. Edwards, Havemeyer, Macartney, Searles, Seymour, and Shriver, with the briefs of District Attorney A. A. Birney and Assistant Attorney-General Holmes Conrad, on behalf of the United States; the brief of Messrs. Shellabarger and Wilson in support of the application of Chapman to the Supreme Court of the United States, for leave to file a petition for a writ of habeas corpus; the objections of Solicitor Lawrence Maxwell thereto; the reply of Messrs. Shellabarger and Wilson and George F. Edmunds to said objections; the brief of A. J. Dittenhoefer in support of the application of Shriver to the same court, for leave to file a petition for a writ of habeas corpus, and the decision of the Supreme Court, by Chief Justice Fuller, denying the applications.

The exhaustive adverse report of the Judiciary Committee of the Senate, made by Senator Edmunds in the Forty-sixth Congress, on the bill of the House "to protect witnesses who shall be required to testify in certain cases," is also given in full, with the views of the minority, by Senators Thurman and Stevenson (pp. 558-567).

The decision of Associate Justice MacArthur, of the Supreme Court of the District of Columbia, dismissing the writ of habeas corpus in the case of Richard B. Irwin, and remanding him to the custody of the Sergeant-at-Arms of the House of Representatives (p. 520), and the decision of Chief Justice Cartter of the same court (p. 547), sustaining the writ in the case of Hallet Kilbourn, and placing him in the custody of the marshal of the said court, in which he had been previously indicted as a contumacious witness, having been certified to the district attorney of said District under the act of January 24, 1857, by the Speaker of the House of Representatives, are also given in full.

The cases of John Anderson, Richard B. Irwin, and Hallett Kilbourn—two of which (Anderson and Kilbourn) reached the Supreme Court of the United States (Anderson *v.* Dunn, pp. 30 and 588; Kilbourn *v.* Thompson pp. 536 and 708)—the case of William Duane (p. 7) and that of John Nugent (pp. 78 and 601), the first reaching the circuit of the United States for the third circuit (October term, 1801), the cases of Nugent and Irwin, in the Supreme Court of the District of Columbia (see p. 7 and pp. 601-620 and 517, respectively), and the cases of Chapman et al., now pending, embrace all the important cases growing out of the action of either house of Congress in asserting its privileges and powers in respect to the cases and subjects stated in the title of this compilation.

HENRY H. SMITH.

FEBRUARY 21, 1895.

SYNOPSIS OF CASES.

I.

BREACH OF PRIVILEGE OF THE HOUSE OF REPRESENTATIVES—ATTEMPT TO BRIBE REPRESENTATIVES—FOURTH CONGRESS, FIRST SESSION, JONATHAN DAYTON, OF NEW JERSEY, SPEAKER.

CASES OF ROBERT RANDALL AND CHARLES WHITNEY.—Attempts to secure support of Representatives to a proposition for a grant of land lying on lakes Erie, Michigan, and Huron, by promising "a consideration or emolument in lands or money." Arrest of Randall and Whitney, 3. Warrant signed by Speaker under his own seal, 3. Appointment of Committee on Privileges of seven members, "to report a mode of proceeding in the said cases," 3. Report of committee, 4. Interrogated at bar of House through the Speaker, 4. Judge of district of Pennsylvania to administer oath or affirmation to all witnesses, and on every debate the prisoners and witnesses shall withdraw, and all questions to be put by the Speaker, 4. Statement of Representative William Smith, of South Carolina, 5. Main question refused on a preamble and resolution, latter declaring that "Robert Randall had committed a high contempt of this House and a breach of its privilege," 6. Resolution adopted that "Robert Randall has been guilty of a contempt to, and a breach of the privileges of this House by attempting to corrupt the integrity of its members in the matter laid to his charge," 6. Randall brought to the bar of the House, remanded by the Speaker, and remanded to the custody of the Sergeant-at-Arms, 6. Prisoners discharged on payment of fees, 6.

II.

DEFAMING THE SENATE—CONTEMPT—LIBEL—UNITED STATES SENATE, SIXTH CONGRESS, FIRST SESSION, DANIEL D. TOMPKINS, OF NEW YORK, VICE-PRESIDENT.

CASE OF WILLIAM DUANE.—Statement of case, 7, 8. References to debate, 8. Questions involved as stated by Mr. Pinckney, 8. Extracts from Journal, 8-18. Committee of Privileges instructed to consider and report what measures it would be proper for the Senate to adopt in relation to a publication in the General Advertiser, or Aurora, on February 19, 1800, respecting the bill prescribing the mode of deciding disputed elections of President and Vice-President, 10. Also "to report what measures ought to be adopted in relation to sundry expressions contained in said paper respecting the Senate of the United States and the members thereof in their official capacity, 10. Committee report, 10. Debated, 10, 11. Report adopted, 11. Extracts from said publication given, 11, 12. Committee report a form of proceedings, 12, 13. Communication and request from Duane, 13. Further communications stating that he had been deprived of counsel under the restrictions adopted by the Senate, 14, 15. Warrant issued and signed by Vice-President Jefferson, 15, 16. Report adopted, 16. Resolution adopted requesting the President "to instruct the proper law officer to commence and carry on a prosecution against William Duane," etc., 16. Report of action taken from "Wallace" (John B.). Reports of cases in the Supreme Court of the United States for the third circuit (Delaware, New Jersey, and Pennsylvania), 16, 17. Opinions of judges, *ibid.* Letter from clerk of the circuit court United States, eastern district of Pennsylvania, giving record of case, 17. Extract from Jefferson's Manual as to case, 17, 18. Powers of Parliament, of State legislatures, courts, State and Federal, and of Congress as to contempts, discussed, 17, 18.

III.

EXPULSION, POWER OF THE SENATE AS TO—AARON BURR CONSPIRACY—TENTH CONGRESS, FIRST SESSION, GEORGE CLINTON, OF NEW YORK, VICE-PRESIDENT.

CASE OF JOHN SMITH, OF OHIO.—Question as to jurisdiction of the Senate, 19. Contemporaneous construction of the Constitution, 19. As to Senate following principles of a court of law or its own judgment and discretion, 19. References to debates, 19, 20. Resolution for appointment of committee to inquire and report to the Senate their opinion whether John Smith, a Senator from Ohio, ought not to be expelled from the Senate in consequence of the part which he took in the conspiracy of Aaron Burr against the peace and prosperity of the United States, or what other steps, in their opinion, it may be necessary and proper under the present circumstances, for the Senate to adopt, 20. Considered, amended, and adopted, 20, 21. Committee appointed, 22. Authorized "to admit the attendance of Mr. Smith," 22. Attendance of Mr. Smith in Senate required, 22. Committee report, 23-29. Expulsion from Senate recommended, 29. Motion carried that Mr. Smith be heard by counsel, 29. Report and resolution considered, 29. Motion to postpone lost by casting vote of Vice-President Clinton, 29. Resolution of expulsion lost—yeas 19, nays 10 (not two-thirds), 29. Notice by Mr. Smith to the governor of Ohio of his determination to resign, 20.

IV.

ATTEMPTED BRIBERY AND CORRUPTION—CONTEMPT AND BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES, FIFTEENTH CONGRESS, FIRST SESSION, HENRY CLAY, OF KENTUCKY, SPEAKER.

CASE OF JOHN ANDERSON.—Statement of case, 30. Submission to House, 30, 31. Resolution adopted authorizing Speaker to issue his warrant directing the Sergeant-at-Arms to take Anderson into custody, 31. Committee of Privileges appointed and instructed to report a mode of proceeding in said case, 32. Committee report resolution that Anderson be brought to the bar of the House and interrogated by the Speaker on written interrogatories, touching the charge of writing and delivering to a member of the House a bribe, with directions as to proceedings, 32. Debated and adopted, 32. Interrogatory and answer, 32. Allowed counsel, 33. Preamble reciting that "the House of Representatives entertaining great doubts of its possessing the competent power to punish John Anderson for his contempt to the House and his outrage on one of its members," submitted with resolutions discharging said Anderson, and directing the Attorney-General to institute such proceedings against Anderson, for his said offense, as may be agreeable to the laws of the United States and of the District of Columbia, and instructing the Committee on the Judiciary "to inquire into the expediency of providing by law for the punishment of any contempt of the Senate or House of Representatives, and of any breach of the privileges of either House," 33. Speaker submits letter from Anderson communicating his desire that any constitutional or other question which may have arisen to prevent his further examination at the bar of the House may be waived, and that he declined the assistance of counsel, 33. Preamble and resolutions debated, 33, 34. Same postponed indefinitely, 34, 35. Brought to the bar and interrogated, 35, 36. Witness interrogated by Speaker, 36. Anderson heard in his defense, 37. Proceedings and debate, 37. Resolution adopted declaring that Anderson had committed a high contempt against the privileges of the House, and that for said offense he be immediately reprimanded by the Speaker and discharged from custody, 37, 38. Reprimanded by Speaker Clay and discharged, 38. Abstract of proceedings as shown by annals of Congress, 38, 39. Speaker Clay submits letter from Thomas Dunn, Sergeant-at-Arms, stating that John Anderson had instituted suit against him on a charge of false imprisonment, etc., 39. Resolution reported from the Committee on the Judiciary adopted authorizing the Speaker to employ counsel to defend said Dunn in said suit, 39. Statement as to said suit, 40. See decision of Supreme Court, 588.

V.

BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—ASSAULT UPON A REPRESENTATIVE—TWENTY-SECOND CONGRESS, FIRST SESSION, ANDREW STEVENSON, OF VIRGINIA, SPEAKER.

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ment of Speaker Stevenson, 42. Reply of Houston, 42. Resolution submitted by Mr. Davis, of Massachusetts, and adopted, for appointment of a Committee on Privileges to report a mode of proceeding, 42. Committee appointed and report mode, etc., 42, 43. Proceedings, 43, 44. Resolution adopted that Houston be brought to the bar on the following Monday, there reprimanded by the Speaker for the contempt and violation of the privileges of the House and discharged from custody, 43. Paper presented by Houston in nature of a protest, 44. Speaker reprimands Houston, who is then discharged from custody, 44.

VI.

LIBEL ON THE SENATE—CHARGES OF BRIBERY AND CORRUPTION—TWENTY-NINTH CONGRESS, FIRST SESSION, GEORGE M. DALLAS, OF PENNSYLVANIA, VICE-PRESIDENT.

PUBLICATION IN THE DAILY TIMES, OF WASHINGTON, D. C.—Statement of case, 45. Matter brought to the attention of the Senate by Senator Jarnagin, of Tennessee, 45. Resolution for the appointment of a committee of five members to inquire and report what measures, if any, are proper to vindicate the character and honor of the Senate against the charges of corruption, published in the said Times, 46. Debated by Senators Mangum, Speight, Calhoun, Benton, Chalmers, Bagley, and Berrien, and unanimously adopted, 46–49. Committee appointed, 49. Committee report, 50. Journal of committee and testimony, 55–66. Depositions of Senators Dayton of New Jersey, Jarnagin of Tennessee, Atchison of Missouri, Webster of Massachusetts, Mangum of North Carolina, Corwin of Ohio, Anderson of Tennessee, Evans of Maine, Clayton of Delaware, Davis of Massachusetts, Archer of Virginia, and Johnson of Maryland, 66–74. Debate on report, 74–76. Report unanimously agreed to, 74. Editors and reporters excluded from the Senate gallery, and not again admitted, 53, 74, 76.

VII.

LIBEL ON THE SENATE—TWENTY-NINTH CONGRESS, SECOND SESSION, GEORGE M. DALLAS, OF PENNSYLVANIA, VICE-PRESIDENT.

LIBELOUS PUBLICATION IN THE UNION, OF WASHINGTON, D. C.—Statement of case, 77. Resolutions submitted by Senator Yulee, of Florida, declaring that the editors of the Union had issued and uttered a public libel upon the character of the Senate, and excluding them from the privilege of admission to the floor of the Senate, and excluding the reporter from a place in the gallery of the Senate, 77. Proceedings and rulings, 77. Debated and first resolution agreed to and second withdrawn, 77. Senator Benton's resolution rescinding resolution expelling Mr. Ritchie (editor Union) from the floor of the Senate, rejected, 77.

VIII.

PRIVILEGES AND CONTEMPT OF THE SENATE—PUBLICATION OF TREATY WITH MEXICAN REPUBLIC IN NEW YORK HERALD—CONTUMACIOUS WITNESS—THIRTIETH CONGRESS, FIRST SESSION, GEORGE M. DALLAS, OF PENNSYLVANIA, VICE-PRESIDENT.

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IX.

THE GARDINER CLAIM—CONNECTION OF THOMAS CORWIN, SECRETARY OF THE TREASURY—ACT TO PREVENT FRAUDS ON THE TREASURY—PUNISHING ATTEMPTS TO BRIBE OR CORRUPT MEMBERS OF CONGRESS AND OTHER OFFICERS OF THE GOVERNMENT—THIRTY-SECOND CONGRESS, SECOND SESSION, LINN BOYD, OF KENTUCKY, SPEAKER.

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ASSAULT UPON CHARLES SUMNER, OF MASSACHUSETTS, BY REPRESENTATIVE PRESTON S. BROOKS, OF SOUTH CAROLINA.—Statement of case, 81. Resolution submitted by Senator Seward, of New York, for appointment of a committee to inquire into and report to the Senate the facts, etc., 81. Committee appointed and report made, 81. Resolution adopted transmitting report to the House of Representatives, 83. Action of House of Representatives, 83. Resolution of expulsion reported by committee failed for want of a two-thirds vote, 83. Resignation and reelection of Mr. Brooks, 83. House declares "its disapprobation of the said act of Lawrence M. Keitt (a Representative from South Carolina, who was aware of the contemplated assault and prevented interference in Mr. Sumners behalf), 84. Resignation and reelection of Mr. Keitt, 84. See report for discussion of question as to powers of Senate, and references to precedents and decisions, 81-84.

XI.

CHARGE OF A CORRUPT ORGANIZATION OF MEMBERS OF CONGRESS—PUBLICATION IN NEW YORK TIMES—CONTUMACIOUS WITNESS—THIRTY-FOURTH CONGRESS, THIRD SESSION, NATHANIEL P. BANKS, OF MASSACHUSETTS, SPEAKER.

CASE OF JAMES W. SIMONTON.—Statement of case, 85. Article in New York Times read as basis of question of privilege, 85. Resolution submitted by Mr. Kelsey, of New York, for appointment of a select committee of five members to investigate said charges, report the evidence taken, and what action in their judgment is necessary on the part of the House, 86, 87. Debated, amended, and adopted, 87-94. Committee appointed, 95. Committee report, 95. Recommend adoption of resolution that Speaker issue his warrant directed to the Sergeant-at-Arms commanding that officer to take into custody the body of James W. Simonton, wherever to be found, "and the same forthwith to have before the said House, at the bar thereof, to answer as for a contempt of the authority of this House," 96. Committee also report a bill "more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony, 97. Abstract of bill, 97. Resolution debated and agreed to, 97, 98. Bill considered, 98-104. Motion to refer to the Committee on the Judiciary, 106. Resolution adopted authorizing and directing W. G. Flood, clerk to the Sergeant-at-Arms, to execute the orders of the House during the absence of that officer, 104. Deputy Sergeant-at-Arms announces arrest of Simonton and his presence at the bar of the House, 106. Debate as to procedure, 107. Motion by Mr. Burnett, of Kentucky, that Simonton be heard, debated and withdrawn, 108-110. Resolution offered by Mr. Davis, of Maryland, that the Speaker call on Simonton to show cause why he should not be committed for his refusal to answer the questions propounded by the select committee, 111. Amendments submitted by Mr. Colfax, of Indiana, and Mr. Trippe, of Georgia, debated and withdrawn, 111-114. Mr. Orr of South Carolina, submits amendment, 117. Mr. Davis modifies his resolution, 117. Previous question ordered and Mr. Orr's amendment agreed to and the resolution of Mr. Davis as modified and amended agreed to, 117. Simonton appears at the bar of the House and interrogated by Speaker, 117. Report read, 117. Further interrogatories by Speaker, 117. Questions of order, 118. Speaker rules that "answers can be given orally and not necessarily in writing, 118. Further questions of order, 119. Speaker's rulings, 119. Speaker further interrogates Simonton, 119. Simonton's answer, 119-124. Preamble and resolution by Mr. Harris, of Illinois, declaring that Simonton had failed satisfactorily to answer the questions put to him by order of the House, and has not purged himself of the contempt with which he stands charged, and directing the Sergeant-at-Arms to hold Simonton in custody, and place him in close confinement in the common jail in Washington, D. C., until he shall signify his willingness to answer the questions propounded to him by the committee, 124. Mr. Sherman, of Ohio, submits resolution to be proposed by him as substitute, declaring Simonton "guilty of a contempt of the authority of this House in refusing to answer pertinent questions put to him by a special committee of this House, and that he be held in custody by the Sergeant-at-Arms until he make answer to said questions, or until the further order of the House," 124. Debate, 124-126. Mr. Orr submits amendment, substantially the proposition submitted by Mr. Sherman, 126. Previous question ordered and Mr. Orr's amendment adopted, 127. Motion to reconsider last vote debated and tabled, 128-129. Bill reported taken up, and motion to recommit withdrawn, 129. Substitute offered by Mr. Davis, of Maryland,

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XII.

EXPULSION OF MEMBERS—ALLEGED CORRUPT COMBINATIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES—THIRTY FOURTH CONGRESS, THIRD SESSION, NATHANIEL P. BANKS, OF MASSACHUSETTS, SPEAKER.

CASES OF REPRESENTATIVES WILLIAM A. GILBERT, FRANCIS S. EDWARDS, AND ORASMUS B. MATTESON, OF NEW YORK, AND WILLIAM W. WELCH, OF CONNECTICUT. Statement of case, 191. Committee recommend expulsion except in case of Welch, 191. Resignation of said members except Welch, who was exonerated by committee, 191. Action as to Matteson in following Congress, 191. Select committee appointed, 192. Committee report that it was not competent for the House to expel or punish a member on account of an act committed while a member of the preceding House of which said House took cognizance, 192. Report resolution "that it is inexpedient for this House to take any further action in regard to the resolutions proposing to expel O. B. Matteson," 192. Subject tabled, 192. Report (general) by Mr. Kelsey, 192-200. Resolution reported and adopted expelling Simonton from the floor of the House as a reporter, 200. Bill reported "to protect the people against corrupt and secret influence in matters of legislation," 200. (No action taken thereon.)

XIII.

ALLEGED BRIBERY AND CORRUPTION IN RESPECT TO THE TARIFF ACT OF MARCH 3, 1857—CONTUMACIOUS WITNESS—CERTIFICATION TO DISTRICT ATTORNEY OF THE DISTRICT OF COLUMBIA UNDER ACT OF JANUARY 24, 1857 (NOW CHAPTER SEVEN OF REVISED STATUTES)—THIRTY-FIFTH CONGRESS, FIRST SESSION, JAMES L. ORR, OF SOUTH CAROLINA, SPEAKER.

CASE OF JOHN W. WOLCOTT.—Statement of case, 201. Act of January 24, 1857, requiring the Speaker to certify the facts as to contumacious witnesses, etc., mandatory on that officer, 201. Mr. Stanton, of Ohio, submits preamble and resolutions, the preamble reciting the publication of the report of a committee to investigate the affairs of the Middlesex Manufacturing Company, of Massachusetts, that said company paid a large sum of money to members of said House who were members of the previous House, to secure the passage of the tariff act of March 3, 1857, etc., and the resolutions proposing the appointment of two committees, one of five, to examine and investigate the said report and charges made, and if said committee found that "any sum was paid to any member or officer of the present House," then the committee were to report charges against such party, which were to be referred to another committee, of five members, which was directed to examine and investigate the charges so presented, etc., 202. Debate, 202-226. Amendments offered and action thereon, 211, 213, 214, 218, 224, 225, 226. Resolution as modified by substitute agreed to, 226. Committee appointed, 226. Committee report evidence and resolution directing Speaker to issue his warrant, etc., and bring John W. Wolcott to the bar of the House to answer as for a contempt in refusing to answer a proper and competent question propounded to him by the select committee, etc., 226-228. Debate, 228-246. Act of January 24, 1857, read, 229. Amendments proposed by Mr. Hughes, of Indiana, and Mr. Sickles, of New York, 243, 244. Amendments rejected and resolution of committee adopted, 246. Speaker reports return of warrant by Sergeant-at-Arms, 246. Mr. Stanton submits, and House adopts, resolution for arraignment of Wolcott at bar of the House, and that the Speaker propound certain interrogatories, 247. Sergeant-at-Arms appears with said Wolcott, 247. Speaker propounds said interrogatories, 247. Wolcott responds in writing, requesting until Monday following to purge himself of contempt, 247. Mr. Stanton moves that said request be granted; that the witness remain in the custody of the Sergeant-at-Arms, and have the benefit of

counsel, 247. Debated, 248-253. Motion agreed to, 253. Wolcott appears in custody of Sergeant-at-Arms and, through the Speaker, submits his answer to the interrogatories propounded, 253-257. Debate, 258. Mr. Stanton submits preamble and resolution, the preamble reciting that said Wolcott had failed satisfactorily to answer the questions propounded to him by order of the House, and had not purged himself of the contempt with which he stands charged; and the resolutions directing the commitment of said John W. Wolcott by the Sergeant-at-Arms to the common jail of the District of Columbia, to be kept in close custody until he shall signify his willingness to answer the questions propounded to him, etc., and also directing that whenever the officer having the said Wolcott in custody should be informed by him that he was ready and willing to answer the questions propounded, and all proper and legal questions that might thereafter be propounded to him by said committee, it should be the duty of said officer to deliver said Wolcott over to the Sergeant-at-Arms, whose duty it should be to take the said Wolcott before said committee, and hold him in custody subject to the further order of the House, 258, 259. Debate thereon, 259-263. Preamble and resolutions adopted, 263. Mr. Stanton reports resolution, which was adopted, authorizing any two members of said committee to take testimony of any witness, who, by reason of ill health could not be brought before said committee, 264. Mr. Stanton submits final report, accompanied by the views of Messrs. Moore and Purviance submitted separately, 264-272. Mr. Stephens, of Georgia, submits preamble reciting the facts in said case, and a resolution directing the Sergeant-at-Arms to cause said Wolcott to be released from jail and deliver him over to the marshal of the District of Columbia, or other person authorized to receive him, to answer to the presentment pending in said court, 275. Substitute and amendment submitted and original resolution adopted, 275. Letter from District Attorney Birney, inclosing a certified copy of the case *in re* John W. Wolcott, 272. Docket entries, showing various stages of the case omitted, 275. (Said entries show that on March 17, 1859, nolle prosequi was entered by the United States district attorney upon the payment of \$1,000 and costs by Henry A. Willard, the surety of Wolcott, for said sum, 275.) No further action was taken by the House of Representatives during said session with respect to Wolcott, 275.

XIV.

COMMITTEE REPORT CERTIFIED TO THE DISTRICT ATTORNEY FOR THE DISTRICT OF COLUMBIA.

CASE OF PETER S. DUVAL.—Report not certified under the act of January 24, 1857, 276. No precedent, and said action not since followed, 276. Case of perjury on part of said Duval who was indicted therefor, said indictment being subsequently quashed by reason of certain evidence against Duval being destroyed, 276.

XV.

CONTUMACIOUS WITNESS AND CONTEMPT OF SENATE—INVASION OF HARPERS FERRY—JOHN C. BRECKINRIDGE, OF KENTUCKY, VICE-PRESIDENT.

CASE OF THADDEUS HYATT.—Senator James M. Mason, of Virginia, submits and Senate adopts a resolution for the appointment of a select committee to inquire into the facts "attending the late invasion and seizure of the armory and arsenal at Harper's Ferry, etc." (known as the John Brown raid), 277. Committee appointed, 277. Mr. Mason reports preamble and resolution, the preamble reciting that Thaddeus Hyatt, of New York, had failed and refused to appear before said committee; and the resolution directing the President of the Senate to issue his warrant directed to the Sergeant-at-Arms, commanding him to take into custody the body of the said Hyatt and bring him before the bar of the Senate to answer as for a contempt of the authority of the Senate, 277. Debated and adopted, 277. Sergeant-at-Arms appears at the bar of the Senate, having in custody said Hyatt, 277. Mr. Mason submits a resolution directing that Hyatt be arraigned at the bar of the Senate, and that the President of the Senate propound certain interrogatories, 277. Mr. Hale, of New Hampshire, submits amendment, which was rejected, 277. Resolution adopted, and an order made remanding Hyatt to the custody of the Sergeant-at-Arms, and giving him until March 9, 1860, to make answer to the questions propounded to him by the President of the Senate, 278. Hyatt brought before the bar of the Senate in custody of the Sergeant-at-Arms, and made answer in writing and under oath, 278. Interruptions of reading of said answer, 278, 279. Statement of counsel, John A. Andrew and S. E. Sewall, 279-287. Additional statement or answer by Hyatt, 287-292. Hyatt again brought before the bar of the Senate, 292. Mr. Mason submits preamble and resolution

in lieu of those previously offered by him, but substantially to same effect, 292. Debate as to power of Senate in respect to contumacious witnesses, 292. Preamble and resolutions adopted, 292. Hyatt remains in jail in close custody until June 15, 1860, when the select committee made its final report, also reporting an order (which was adopted) discharging him from custody, 292, 293. Remarks by Senator Sumner, giving authorities, precedents, etc., 293-295.

XVI.

ALLEGED IMPROPER INTERFERENCE WITH LEGISLATION OF CONGRESS—EMPLOYMENT OF MONEY TO CARRY ELECTIONS—PROTEST OF PRESIDENT BUCHANAN AGAINST PROCEEDINGS OF HOUSE OF REPRESENTATIVES UNDER "THE COVODI INVESTIGATION" RESOLUTIONS—THIRTY-SIXTH CONGRESS, FIRST SESSION, WILLIAM PENNINGTON, OF NEW JERSEY, SPEAKER.

Statement of case, 296. Message of President Buchanan protesting against the power of either House of Congress to make such an investigation, 296. Reference of message to Committee on the Judiciary, 296. Report of committee by Representative John Hickman dissenting from the doctrines of said message, 296. Committee hold "that the extent of power contemplated in said resolutions is necessary to the proper discharge of the constitutional duties devolved upon Congress," 296. Further hold "that judicial determinations, the opinions of former Presidents, and uniform usage sanctions its exercise," 296. Further, "that to abandon it would leave the executive department of the Government without supervision or responsibility, and would be likely to lead to a concentration of power in the hands of the President, dangerous to the rights of a free people," 296. Minority views by Messrs. Houston, of Alabama, and Taylor, of Louisiana, 296. Report considered and resolution embodying above propositions adopted, 296. President Buchanan sends further message making additional protest against the report of the committee and the action of the House, 296. Referred, on motion of Mr. Sherman to a select committee of five members with instructions to report thereon at the next session, 296. Committee appointed and report prepared but not submitted, 296.

XVII.

BREACH OF PRIVILEGE OF THE HOUSE OF REPRESENTATIVES—ASSAULT ON REPRESENTATIVE WILLIAM D. KELLEY, OF PENNSYLVANIA—THIRTY-EIGHTH CONGRESS, SCHUYLER COLFAX, OF INDIANA, SPEAKER.

ASSAULT UPON REPRESENTATIVE WILLIAM D. KELLEY, OF PENNSYLVANIA, 297. Statement of case, 297. Mr. Schenck, of Ohio, as question of privilege, submits preamble and resolution, reciting in former, the facts of the case, and in the latter providing for the appointment of a select committee to inquire into said breach of privilege and report all facts and circumstances of the assault, "and what order, if any, it is proper for the House to take for the vindication of its privileges and right and duty of free legislation and judgment," 297. Debated, amendment adopted "suspending Mr. Field (who made the assault) from the privileges of the floor until the report be made," and as amended resolution adopted, 297. Committee appointed, 298. Committee report resolutions for issuance of warrant for the arrest of A. P. Field, convicted of a breach of the privilege of the House in the attempt, by language, of intimidation and bullying, to deter Mr. Kelley "from the free and fearless exercise of his rights and duties as a member of Congress, and voting and deciding upon a pending subject of legislation"; and in following up said attempt by assault upon the person of Mr. Kelley, and that said Field be brought to the bar of the House and reprimanded by the Speaker, 298. Committee report second resolution rescinding resolution granting privilege of the hall to said Field as a contestant for a seat from Louisiana, 298. Report called up, first resolution adopted, and second resolution rejected, 298. Speaker Colfax reprimands Field, 298, 299.

XVIII.

PRIVILEGES OF MEMBERS OF CONGRESS FROM ARREST—THIRTY-NINTH CONGRESS, SECOND SESSION, SCHUYLER COLFAX, OF INDIANA, SPEAKER.

CASE OF CHARLES V. CULVER, A REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA.—Detained from his seat in the House under arrest, 300. Mr. Hale, of New York, submits preamble and resolution, the preamble reciting that said Culver was detained from his seat in the House "in violation of the provisions of the sixth section of the first article of the Constitution, and of the privileges of this

House," and the resolution directing the Committee on the Judiciary to inquire into the circumstances of the case and report the same to this House; whether any breach of its privileges had been committed, and what action should be had thereon, etc., 300. Mr. Williams, of Pennsylvania, from said committee, submits its report, with a resolution recommending that the Speaker issue his warrant to the Sergeant-at-Arms commanding him "to deliver forthwith the Hon. Charles V. Culver, a member of this House, detained, as it appears, under mesne process issuing out of the court of common pleas of Venango County, Pa., in a civil suit * * * from the custody of the sheriff and jailor of said county, or any other person or persons presuming to hold and detain the said Culver by virtue of such process, wherever he may be found * * * and to make return to this House of the said warrant," etc., 304. Warrant of commitment of said Culver to the common jail of Venango County exhibited, 304. Said resolution unanimously agreed to, 304.

XIX.

BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—IMPRISONMENT AFTER ADJOURNMENT OF THE SESSION—ASSAULT UPON REPRESENTATIVE CHARLES H. PORTER OF VIRGINIA—CASE OF PATRICK WOODS, ALIAS "PAT" DOOLEY—FORTY-SECOND CONGRESS, SECOND SESSION, JAMES G. BLAINE, OF MAINE, SPEAKER.

Statement of case, 305. First instance of continued imprisonment of a person by order of either House of Congress after the adjournment of a session, 305. Important ruling by Speaker Blaine, 305. Reference to opinion of Attorney-General B. F. Butler "that the power to punish breaches of the privilege of the House was no part of the general jurisdiction of the courts of the country to punish crimes against the laws," 305. Further statement of the case, 305. Speaker Blaine lays before the House communication from Representative Porter narrating facts of the assault upon him by Patrick Woods, alias "Pat" Dooley, 305, 306. Mr. Ward, of New York, submits resolution directing the Speaker to issue his warrant commanding the Sergeant-at-Arms to take into custody the body of Patrick Woods, alias "Pat" Dooley, "and the same in his custody to keep subject to the further order and direction of this House," 306. Question of order raised against said resolution overruled by Speaker Blaine and said resolution adopted, 306. Sergeant-at-Arms appears at bar of the House having in custody said Woods, alias Dooley, 306. Mr. John Allison, of Pennsylvania, submits resolution, which was agreed to, referring the matter of privilege to the Committee on the Judiciary for examination and report to the House what action should be taken in the premises, and in the meantime directing that Woods be retained in the custody of the Sergeant-at-Arms, 306. Mr. Bingham, of Ohio, reports from said committee a preamble and resolution, the preamble reciting the facts of the assault, and the resolution providing that said Woods, alias Dooley, "now held at the bar of the House to answer for a breach of the privileges of the House, for his offense, be, and hereby is, ordered to be punished by imprisonment in the jail of the District of Columbia, as other criminals are, for three months; and that a warrant in due form, under the hand of the Speaker, be issued to the Sergeant-at-Arms, directing the execution of this order," 306, 307. Mr. Eldredge, of Wisconsin, submitted an amendment in the nature of a substitute, providing that said Woods "be forthwith returned to the hustings court of the city of Richmond, Va., there to be dealt with according to law," 307. Debated for two days, 307. Opinion of Attorney-General B. F. Butler of June 25, 1834, on the memorial of General Houston cited, 307. References to and quotations from case of *Anderson v. Dunn*, supported by such writers as Kent, Story, and Rawle, "that among the implied powers of each House, necessary to the existence of the legislative branch of the Government, is the power to punish breaches of its privileges," 307. Citation from "Rawle on the Constitution" as to the powers of Congress to punish attempts "to assail the freedom, or corrupt the integrity of any of its members," 308. Further citations made, 308. Citation of English precedents submitted by Mr. Eldredge, of Wisconsin, 308, 309. Mr. B. F. Butler, of Massachusetts, submits an amendment striking out the words "three months," and inserting in lieu thereof the words "till the third of March next," 309. Said amendment rejected by yeas 88, nays 89, 309. Mr. Eldredge's substitute rejected and preamble and resolution reported by Mr. Bingham agreed to, 309. Speaker lays before House certain papers relating to and covering the commitment of Woods, which were ordered to be entered on the Journal as completing the record, 310. Mr. Bingham submits and House adopts a resolution authorizing the Sergeant-at-Arms or his assistant to take Patrick Woods to Richmond, Va., to give evidence in the case of one John Gurhiser, on trial there for his life, 310. Session terminated July 15, 1870, but the order of the House was duly executed, 310.

XX.

PRIVILEGES OF THE SENATE—PUBLICATION OF THE TREATY OF WASHINGTON IN THE NEW YORK TRIBUNE—CONTUMACIOUS WITNESSES—FORTY-SECOND CONGRESS, FIRST SESSION, SCHUYLER COLFAX, OF INDIANA, VICE-PRESIDENT.

CASES OF Z. L. WHITE AND H. J. RAMSDELL, 311.—Statement as to case, 311. Proceedings originated in executive session of May 16, 1871. Select committee of five appointed on May 12 (in executive session) to investigate how, and by whom, the treaty, known as the "Treaty of Washington," and other recent proceedings of the Senate were made public, 311. Senator Carpenter, of Wisconsin, submits report, including certain testimony, with resolutions reciting that said White and Ramsdell, witnesses before said select committee, being lawfully required to testify before it, had refused to answer proper inquiries put to them in the course of said investigation, be forthwith arrested by the Sergeant-at-Arms, and brought before the Senate at its bar, etc., and be detained in custody until they should answer for contempt of the order of the Senate and abide such further order as the Senate might make in the premises, 313. Testimony of said White and Ramsdell, 313-320. Subpœna of said witness and return of, 320. Resolutions agreed to, 320. Said witnesses appear at the bar, 321. Senator Carpenter submits resolution propounding certain interrogatories and form of proceeding, 321. Debate thereon, 321-323. Acts of January 24, 1857, and January 24, 1862, read, 323. Extracts from testimony read, 324. Extract from editorial in New York Tribune read, 325. Amendment submitted by Senator Fenton, of New York, 328. Debate, 328. Amendment to the amendment by Senator Hill, of Georgia, 334. Senator Hill's amendment rejected, 340. Senator Fenton's amendment rejected, 341. Modification of resolution by Senator Carpenter, 341. Amendment by Senator Trumbull, of Illinois, to second interrogatory agreed to, 348. Further amendment by Senator Fenton, 348. Debated and rejected, 352. Resolution relating to White as amended, debated and agreed to, 352, 353. Sergeant-at-Arms appears with witness White, 354. Vice-President propounds said interrogatories, 354. Witness asks time to prepare an answer, 354. Granted until noon following day, 354. Senator Carpenter submits similar resolution as to Ramsdell, which is adopted, 355. Witness asks, and is granted until noon the following day to make answer, 356. Witness White reappears in custody of Sergeant-at-Arms, 356. Answers said interrogatories, 356, 357. Witness sworn and Vice-President propounds interrogatories ordered by the Senate, 357. Witness answers certain interrogatories and declines to answer others, 357, 358, 359. Senator Carpenter submits preamble and resolutions, the said preamble reciting certain facts relating to refusal of said White to answer the said interrogatories propounded, and the resolutions directing his commitment to the common jail of the "Territory of Columbia," there to be kept in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and such proper questions as may be propounded by the committee, and the officer having said White in custody, whenever notified by him that he is ready and willing to answer said questions propounded, shall deliver said White to the Sergeant-at-Arms, whose duty it shall be to take him before said committee and in case he should duly answer all proper questions put to him by said committee, he should be discharged from custody, said committee being continued during the recess following the existing session and authorized to sit during said recess with all powers conferred by the original resolution of the Senate under which said committee was appointed, 359. Senator Morton's motion to table said preamble and resolution rejected, 359. Senator Sumner's amendment to strike out all relating to the common jail and committing said witnesses to custody of Sergeant-at-Arms agreed to, 360. Senator Wilson, of Massachusetts, moves to strike out the last paragraph continuing the select committee during the recess, 360. Debated and rejected, 360-401. Senator Windom, of Minnesota, submits amendment requiring said committee to remain in continuous session until said witness White should come before them and purge himself of contempt, 401. Debated and rejected, 401, 402. Senator Carpenter submits verbal amendments which are agreed to, 402. Senator Thurman, of Ohio, submits an amendment to pending resolution that "such imprisonment shall not continue longer than twenty days from date," which is rejected, 403. Senator Thurman, of Ohio, offers proviso that if said committee shall fail to hold a session at Washington for the space of one week and to give notice thereof to said White, he shall be discharged from custody, 403. Senator Scott, of Pennsylvania, offers substitute providing that "if said committee shall fail to meet for ten days after the chairman shall have been notified by the officer in charge of said witness that he is willing to answer the questions he has heretofore refused to answer, and other proper questions asked him, then said witness shall be discharged," 404. Modified and debated, 405. Substitute offered by

Senator Scott, 408. Amendment by Senator Conkling, of New York, agreed to, 409. Amendment by Senator Thurman, striking out the words "all proper questions put to him by the said committee," agreed to, 410. Amendment by Senator Saulsbury, of Delaware, to strike out the word "close," so as to read "in custody," rejected, 410. Amendment by Senator Harlan, of Iowa, requiring Sergeant-at-Arms forthwith, when notified of the readiness of said witness White to appear and answer as aforesaid, to notify every member of the committee thereof agreed to, 411. Amendment by Senator Harlan similar to others heretofore offered and rejected, also rejected, 413. Senator Thurman offers substitute directing the Vice-President "to communicate to the district attorney of the District of Columbia the fact of the offenses committed by said White as hereinbefore recited, in order that he may be prosecuted under the statute in such case made and provided, and that said White be now discharged from the custody of the Sergeant-at-Arms," rejected, 414. Senator Vickers, of Maryland, submits preamble and resolution, the preamble reciting that said White having testified that he did not receive a copy of the treaty from any Senator, or officer, or employee of the Senate, either directly or indirectly, thereby exculpating the Senate, its officers, and employees, and the resolution directing that said White be discharged from custody, 414. Debated and rejected, 414. Senator Casserly, of California, submits substitute as to procedure before committee, 414. Debated and rejected, 415, 416. Preamble and resolution as to White adopted, 417. Witness Ramsdell appears and answers, 418. Witness sworn by Vice-President and makes same answers, 418. Vice-President propounds interrogatories ordered by the Senate and witness replies or declines to answer, 419. Debated, 420. Senator Carpenter submits same preamble and resolutions as in case of White with change of name, 421. Agreed to, 421. (May 19, 1871.) Debate, 422. Senators Wilson and Sumner submit resolutions for release of said White and Ramsdell, 423. Debate thereon, 424, 425. Senator Carpenter submits report as to examination of certain witnesses, and that Charles A. Tinker and Joseph A. Kirby are in contempt of the Senate for their refusal to answer said questions, 425. Debate, 426. Report tabled, 427. Question on Senator Wilson's resolution, 427. Senator Sherman, of Ohio, submits substitute to the effect that as the committee were unable to ascertain by whom the said treaty was made public, by reason of the refusal of witnesses to testify, and no proof appearing that any Senator or officer of the Senate disclosed said treaty, "it is ordered that the committee be discharged from the further consideration of the subject, and the Senate being about to adjourn the witnesses now in custody be discharged," 427. Debated and withdrawn, 428. Debate, 428-445. (May 26, 1871.) Question on Senator Wilson's resolution, 445. Senator Davis, of Kentucky, moves to amend by adding the following proviso, viz: "That this resolution shall not be held or construed to interfere with any legal proceedings which may be instituted against the said White and Ramsdell upon the certificate issued by the Vice-President under the third section of the act of January 24, 1867," 445. Debate, 445-457. (May 27, 1871.) Question on amendment of Senator Nye (that of Senator Davis withdrawn) to the resolution of Senator Wilson, discharging said witnesses from custody, 457. Debate, 457-502. Senator Nye's amendment rejected, 503. Question on resolution of Senator Wilson, 503. Debated and adopted, 503, 504. Senator Thurman submits resolution instructing "the Judiciary Committee to inquire and report to the Senate, at its next session, what are the powers of the Senate to imprison a witness refusing an answer to a proper question put to him by the Senate or one of its committees, and especially whether imprisonment for such a cause can in any case extend beyond the session of the Senate at which the imprisonment is ordered," 504. Present consideration objected to and no further action taken on said resolution, 504.

XXI.

LIBELOUS STATEMENTS AND PUBLICATIONS IN THE NEW YORK EVENING POST AS TO MEMBERS OF THE HOUSE OF REPRESENTATIVES—CUBAN BOND LOBBY—FORTY-FIRST CONGRESS, SECOND SESSION, JAMES G. BLAINE, OF MAINE, SPEAKER.

CASE OF W. SCOTT SMITH, 505.—Statement of case, *ibid.* Report of committee discusses the question of "the legal rights and liabilities of conductors of the public press," and quotes an important decision by the Lord Chief Justice of England in a libel suit against the London Times, 505, 509. Mr. Fitch, of Nevada, submits a resolution, which was adopted, that W. Scott Smith, reporter of the New York Evening Post, be brought to the bar of the House to show cause, if he can, why he should not be expelled from the reporters' gallery for libelous statements reflecting upon the integrity of members of this House, 505. Said Smith arraigned, and submits a statement in writing, 505. Interrogatories propounded said Smith and his reply, 505. Said Smith states that certain documents were shown him confidentially, and that it would be a violation of good faith to make public the

source from which they were obtained, 505. Mr. Cox, of New York, submits resolution that all proceedings in the case be suspended and the said Smith discharged, 505. Mr. Sargent, of California, submits amendment by way of substitute to the effect that said Smith "having failed to purge himself of the charge of having slandered a member of this House, and having declined to give the sources of the information upon which he alleges he based his statement, be expelled from the reporters' gallery, 506. Pending said substitute, Mr. Farnsworth, of Illinois, moved an amendment to the substitute referring the said charge and resolution to a select committee of five members, etc., which amendment was agreed to, and the original proposition as amended was agreed to, 506. Committee appointed, 506. Report of committee recommending that the resolution referred to them be laid on the table, 509. Exhibits A and B, 509, 511, 513.

XXII.

CREDIT MOBILIER—ALLEGED BRIBERY OF MEMBERS OF THE HOUSE OF REPRESENTATIVES—EVIDENCE AFFECTING SENATORS TRANSMITTED TO THE SENATE—FORTY-SECOND CONGRESS, THIRD SESSION, JAMES G. BLAINE, OF MAINE, SPEAKER; SCHUYLER COLFAX, OF INDIANA, VICE-PRESIDENT.

CASES OF REPRESENTATIVES OAKES AMES, OF MASSACHUSETTS, AND JAMES BROOKS, OF NEW YORK; SENATOR JAMES W. PATTERSON, OF NEW HAMPSHIRE, 513.—Statement of case, 513. Notable as affecting the official integrity of the Vice-President of the United States, the Speaker of the House of Representatives, members of both Houses of Congress, and a Secretary of the Treasury, 513. Action of House of January 6, 1873, directing the select committee "to continue such investigation without secrecy as to either their past or future proceedings, and that the testimony hitherto taken be made public," a reversal of the unbroken practice in respect to Congressional investigations, 513. Also a departure from the settled and established principles of the common parliamentary law of England, as of this country, 513. Action taken "on account of public clamor," 513. John B. Alley, an ex-Member of Congress from Massachusetts, threatened with personal violence on account of publication in New York Sun purporting to give his testimony before the select committee in full, 513. Alleged "purposely distorted reports of testimony given before said committee," 513. Speaker Blaine (Mr. S. S. Cox, of New York, in the chair) submits preamble and resolution, the preamble reciting that "accusations had been made in the public press, founded on the alleged letters of Oakes Ames, a Representative from Massachusetts, and upon the alleged affidavit of Henry C. McComb, of Wilmington, Del., to the effect that members of this House were bribed by said Ames to perform certain legislative acts for the benefit of the Union Pacific Railway Company by presents of stock in the Credit Mobilier of America, or by presents of a valuable character derived therefrom, and the resolution providing for the appointment of a select committee of five members to be appointed by the Speaker pro tempore, whose duty it shall be to investigate and ascertain whether any member of this House was bribed by Oakes Ames, *or any other person or corporation*, in any manner touching his legislative duty" (the foregoing words italicized were suggested by Mr. Butler, of Massachusetts), 514. Debate on and adoption of said preamble and resolutions, 514. Committee appointed, 514. Appointment of another select committee of five members on motion of Mr. Jere M. Wilson, of Indiana, "to inquire whether or not any person connected with the Credit Mobilier holds bonds of the Union Pacific Railroad Company for the payment of which, or the interest thereon, the United States is liable, 514. Instructions to said committee, 514. Additional instructions, 514. Instructions to first-named committee, 514. Mr. Poland, of Vermont, from said committee, submits a report (No. 77), accompanied by two resolutions expelling Oakes Ames, of Massachusetts, and James Brooks, of New York, 514. Mr. Wilson, from said second committee, submits two reports (Nos. 78 and 95), 514. Consideration of Poland report, 514, 515. Resolutions amended by adoption of a substitute "condemning the conduct of said Ames and Brooks, etc.," rejecting previously a preamble declaring that "grave doubts exist as to the rightful exercise by this House of its power to expel a member for offenses committed by such member long before his election thereto and not connected with such election," 514. Reference to cases of King and Schumaker, in Forty-fourth Congress, 515. Mr. Poland reports preamble and resolution, the preamble reciting that "the evidence taken by the select committee appointed March 2, 1872, for the purpose of examining into charges of bribery of members of the House contains matter affecting members of the Senate, and the resolution directing the Clerk to transmit to the Senate a copy of all evidence thus far reported to the House by said committee, together with a copy of that resolution," 515. Said preamble and resolution agreed to and copy of said resolution and evidence duly transmitted to the Senate, 515. Appointment of

select committee of five Senators on motion of Senator Patterson, of New Hampshire, to which was referred said message from the House of Representatives, 515. Senator Morrill, of Maine, from said committee, submits report accompanied by a resolution expelling James W. Patterson, of New Hampshire, from his seat as a member of the Senate, 515. Not acted on, 515. Pamphlet prepared by Mr. Patterson on said report submitted by Senator Anthony, of Rhode Island, and ordered printed, 515.

XXIII.

PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—CONTUMACIOUS WITNESS—WRIT OF HABEAS CORPUS—FORTY-THIRD CONGRESS, SECOND SESSION. JAMES G. BLAINE, OF MAINE, SPEAKER.

CASE OF RICHARD B. IRWIN.—Statement of case, 516. Resolution adopted (December 4, 1874) directing "the Clerk of the House to lay before the next House of Representatives a copy of the testimony taken before the Committee on Ways and Means upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service, to the end that said Congress might take due action upon the questions affecting William S. King and John G. Schumaker (members elect to said House), 516. Also directing the Clerk to transmit a copy of said evidence to the United States district attorney for the District of Columbia, with directions to lay so much of the same as relates to the truth of the testimony given by said King and Schumaker, before the grand jury for such action as the law seems to require," 516. Mr. Dawes, of Massachusetts, from the Committee on Ways and Means, reported a preamble and resolution, the preamble reciting that Richard B. Irwin was, on September 10, 1874, duly summoned to appear and testify before said committee, which was charged with the investigation of certain allegations against the Pacific Mail Steamship Company, and had, without sufficient cause, neglected to appear before said committee pursuant to said summons, and the resolution directing the Speaker "to issue his warrant commanding the Sergeant-at-Arms to take into custody the body of the said Irwin, and to have the same brought forthwith before the bar of the House to answer for contempt of the authority of the House in thus failing and neglecting to appear before said committee," 516. Resolution amended after debate by striking out words "without sufficient cause" and agreed to, 516. Mr. Dawes reports resolution discharging said Irwin from custody of the Sergeant-at-Arms, he "having given satisfactory reasons for having neglected to appear before the Committee on Ways and Means," which was agreed to, 516. Subsequently (on same day), Mr. Dawes submitted a report in which was included certain evidence given by the said Irwin, before said committee, in the course of which he refused to answer certain questions propounded by the committee, concluding with the statement "that it is necessary for the efficient prosecution of the inquiry ordered by the House, that said questions should be answered, and that there is no sufficient reason why the witness should not answer the same, and that his refusal is in contempt of the House," 517. Mr. Dawes also reported a resolution similar to one previously adopted, directing the Speaker to issue his warrant, etc., which resolution was adopted, 517. Debate as to the constitutional and legal powers of the House of Representatives over and in respect to witnesses before its committees, 517. Presentation of authorities and precedents, 517. Mr. Irwin arraigned at the bar of the House and interrogated by the Speaker, 517. Answers thereto, 517. Resolution adopted, submitted by Mr. Dawes, declaring that said Irwin "has failed to show sufficient cause why he should not answer the questions propounded to him," and that he "be considered in contempt of the House for failure to make answer thereto," 517. Mr. Roberts, of New York, from the Committee on Ways and Means, reported a resolution, which was agreed to, directing that said Irwin be remanded to the custody of the Sergeant-at-Arms to abide the further orders of the House, and to be taken before said committee, if he shall declare himself ready to answer such questions as may be lawfully put to him, including those asked by order of the House, "and while he shall so remain in custody, the Sergeant-at-Arms shall keep the witness in his custody in the common jail of the District of Columbia," 517. Mr. Dawes presents letters from Drs. W. P. Johnson and Alexander Y. P. Garnett, physicians in attendance on said Irwin, representing that his confinement in said jail would be attended with results pernicious to his health, which letters were referred to the Committee on Ways and Means and no action taken thereon, 517. Mr. Butler, of Massachusetts, submitted a resolution which was rejected, "that pending the examination and report of said committee on said subject, the Sergeant-at-Arms be instructed to retain said Irwin in his own custody and not in the common jail," 517. Speaker Blaine lays before the House a letter from Sergeant-at-Arms N. G. Ordway, announcing that a writ of

habeas corpus had been served on him, directing him to produce the body of the said Irwin before Justice McArthur, one of the judges of the supreme court of the District of Columbia, on January 12, 1875, etc., and asking instructions from the House of Representatives 517, 518. Mr. Dawes submits resolution, which, as modified by Mr. Hawley, of Connecticut, directed the Sergeant-at-Arms to "make careful return to the writ of habeas corpus in the case of Richard B. Irwin, that the prisoner is duly held by authority of the House of Representatives to answer any proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of the said Irwin before said court when making such return, and retain said Irwin, and continue to hold him subject to the further order of this House," 518. Mr. George F. Hoar, of Massachusetts, moved to amend by striking out all after the word contempt, 518. Mr. Hale, of New York, moved an amendment referring the subject-matter to the Committee on the Judiciary, with instructions to report thereon with all practicable dispatch, and that the Sergeant-at-Arms be instructed not to produce the body of said Irwin before any court, officer, or tribunal till the further order of the House, 518. Mr. Tremaine, of New York, submitted a substitute instructing the Sergeant-at-Arms "to make return to the writ of habeas corpus, showing in proper form that he holds the prisoner in custody under the order of this House adjudging him guilty of contempt; and that he be further instructed not to bring the body of the prisoner before the court until otherwise ordered by this House, 518. Mr. Eldredge, of Wisconsin, moved that the whole subject be laid on the table, which was rejected, 518. Amendment submitted by Mr. Hoar agreed to, 518. Amendments submitted by Messrs. Hale and Tremaine disagreed to and resolution as amended agreed to, 518. Mr. Kasson, of Iowa, from the Committee on Ways and Means, reports two orders, the first directing the Sergeant-at-Arms, with the aid of counsel, to make known to Judge McArthur that he, the said Sergeant-at-Arms, has said Irwin in his custody pursuant to an order of this House, upon its judgment that the said Irwin was in contempt of the House of Representatives and for no other reason; that the House requires him to retain the body of said Irwin in his custody until the said Irwin shall offer to purge himself of said contempt, and that he inform the judge that, as an officer of the House, he can not disobey the orders thereof in any respect by releasing in any way or transferring said Irwin from his custody, and that he exhibit a copy of the order of the House adjudging said Irwin in contempt, "the warrant of the Speaker in execution thereof, and a copy of this order," 518, 519. House refuses to order the previous question, and Mr. Cessna, of Pennsylvania, submits amendment striking out all after Sergeant-at-Arms and inserting "be directed to produce the body of the prisoner before the court as commanded by its order, and to obey its judgment in the premises," 519. After debate Mr. Beck, of Kentucky, submits a substitute striking out all after the word "*Resolved*," and inserting in lieu thereof the following words: "That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of habeas corpus in the case of Richard B. Irwin, that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of the said Irwin before said court when making such return, as required by law," 519. Mr. Cessna withdraws his first amendment and moves to amend said substitute by adding the words, "and that he be further directed to obey the order of said court in the premises," 519. Mr. Kasson modifies his original proposition by inserting after the words "in refusing to give testimony as a witness," the words "and is detained pending such examination," 519. Mr. Cessna's amendment rejected, the substitute of Mr. Beck agreed to, and the original proposition as amended agreed to, 519. Mr. Dawes presents letter from said Irwin stating his readiness to answer the questions propounded to him at the bar of the House, and asking that he be no longer confined in the common jail, which was laid on the table, 519. Subsequently, on the same day, Mr. Dawes, from the Committee on Ways and Means, reports a preamble and resolution, the preamble reciting the facts in the case, and of the willingness of said Irwin to answer the questions which he has heretofore refused to answer, and others that may be lawfully put to him, and the resolution rescinding so much of the resolution of January 6 as requires the Sergeant-at-Arms to keep the said Irwin in the District jail, and that upon answering the said question or questions the said Irwin shall be discharged from the custody of the Sergeant-at-Arms, which preamble and resolution were agreed to, 520. (January 25, 1875.) On motion of Mr. Dawes the said Irwin was discharged from custody and the judicial proceedings in the said case were ordered printed in the Congressional Record, 520 (see Record, January 25, p. 707). Statement as to said judicial proceedings, 520. Ruling of Justice MacArthur, 520. Mr. Shellabarger's argument and citation of precedents, 523-535.

XXIV.

PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—REAL ESTATE POOL—CONTUMACIOUS WITNESS—WRIT OF HABEAS CORPUS—FORTY-FOURTH CONGRESS, FIRST SESSION, MICHAEL C. KERR, OF INDIANA, SPEAKER.

CASE OF HALLET KILBOURN.—Statement of case, 536. Reference to case of *Anderson v. Dunn* (see p. 588), 536. Mr. Glover, of Missouri, submits preamble and resolution, the preamble making certain recitals in relation to the indebtedness of Jay Cooke & Co., to the Government "resulting from improvident deposits made by the Secretary of the Navy with the London branch of said firm," and alleging certain irregularities in respect to certain settlements or transactions of said firm with the Government by which the latter was a loser, etc., and the resolution providing for the appointment of a select committee of five members of the House, to inquire into the nature and history of said "real estate pool," and the character of said settlement, with the amount of property involved, in which Jay Cooke & Co. were interested, and the amount paid or to be paid, 536. Resolution agreed to and committee appointed, 536. Mr. Glover, from said committee, submits report, in which, after reciting said preamble and resolution, the committee state that a subpoena *duces tecum* was issued, and duly served on said Hallet Kilbourn, 537. The report then recites certain testimony given by said Kilbourn; a statement of Mr. Jeremiah S. Black, of counsel for said Kilbourn, and the reply thereto of Mr. New, of Indiana, a member of the committee, together with the declination of said Kilbourn to answer certain questions propounded, etc., 537. Committee report resolution, which was adopted, directing the Speaker to issue his warrant to the Sergeant-at-Arms, commanding him to take into custody forthwith the body of the said Kilbourn and bring him to the bar of the House to show cause why he should not be punished for contempt, and in the meantime to keep him in custody, etc., 539. Sergeant-at-Arms appears at the bar of the House with the said Kilbourn in custody, 539. Speaker propounds interrogatory to said Kilbourn, 539. Said Kilbourn asks to be heard by counsel, and Mr. Page, of California, moves that said request be granted, 539. Said motion, tabled, 539. On motion of Mr. Banks, of Massachusetts, leave was granted said Kilbourn to make his statement in writing, 539. Clerk reads paper handed him by said Kilbourn, 539-541. Speaker propounds interrogatories as to readiness of witness to answer the questions asked by the committee and to produce the records required by said committee, 541. Witness declines to answer said interrogatories, 541. Mr. Glover submits, and the House adopts, resolution that said Kilbourn having been heard by the House and having failed to show sufficient cause why he should not answer said questions and obey said subpoena *duces tecum*, is therefore considered in contempt of the House because of said failure, 541. Mr. Glover submitted a further resolution in respect to purging himself of contempt and as to details relating thereto, etc., and that in executing said order the Sergeant-at-Arms shall cause the said Kilbourn to be kept in his custody in the common jail of the District of Columbia, 541. Speaker submits communication from the district attorney of the District of Columbia, under date of March 27, 1876, stating that the grand jury had found an indictment against said Kilbourn comprising five (recited) counts, 542. Sergeant-at-Arms Thompson reports to the Speaker that Alexander Sharp, United States marshal for the District of Columbia, called upon and notified him that he (Sharp) had a warrant issued by the supreme court of said District for the arrest of said Hallet Kilbourn; that said Marshal Sharp asked to be admitted to presence of said Kilbourn in order that he might serve said warrant; that he (Thompson) declined to comply with said request for reasons stated, and accordingly submitted said matter to the House of Representatives, 542. Mr. Glover submits a resolution reciting the facts, and directing the Sergeant-at-Arms to retain the custody of said Kilbourn, and not to part with his custody or deliver him up to any person, officer, court, or tribunal until the further order of the House, 543. Mr. Hurlbut, of Illinois, submitted substitute, the preamble reciting the facts, and that afterwards (meaning after March 14, 1876), "in pursuance with the provisions of law, the Speaker did certify to the district attorney of the District of Columbia the facts pertaining to said case, and the same were laid before the grand jury of said District, and a presentment was thereupon found against said Kilbourn for the said offense, and that said Kilbourn can not be tried thereon so long as the House holds him in custody under its rights of privilege, and the resolution directing the Sergeant-at-Arms to cause said Kilbourn to be released from jail, and to deliver him over to the marshal of said district to answer to said presentment, 543. Said substitute rejected and original resolution adopted, 543. Mr. Glover moves that the rules be suspended so as to allow him to submit and the House to agree to

a preamble and resolution, which preamble recited that said Kilbourn, confined in the District jail by order of the House, "is being fed in the most extravagant and sumptuous manner, his meals being sent from the House restaurant in a hack;" that he was "being furnished by his friends with wines of the most expensive kinds," and that "such things are destructive of all jail discipline and of the object for which said Kilbourn was imprisoned," and the resolution directing the Sergeant-at-Arms to contract with the jailor to furnish said Kilbourn the same prison fare furnished to other prisoners in said jail, and also instructing him not to furnish said Kilbourn any fare other than that above specified, nor allow him any wines, liquors, or other intoxicating drink, except when the same may be prescribed to him as medicine by a regular physician in good standing, 543. Resolution rejected, two-thirds not voting therefor, 544. Speaker lays before the House a communication from the Sergeant-at-Arms, notifying the House of Representatives that a writ of habeas corpus had been served upon him commanding him to have the body of Hallet Kilbourn, now in his custody, before one of the justices of the supreme court of the District of Columbia, at 10 o'clock a. m., April 12, 1876, "to do and receive whatever shall then and there be considered in that behalf," 544. Sergeant-at-Arms asks for instructions and produces a copy of said writ, 544. Mr. New, of Indiana, submits a resolution, which was agreed to, referring the matter of habeas corpus relating to Hallet Kilbourn, to the Committee on the Judiciary for their examination and opinion, as to what should be the action of the Sergeant-at-Arms in reference thereto, and that said committee report on the following Saturday, 544. Mr. Hurd, of Ohio, from the Committee on the Judiciary, reports a preamble and resolution, the preamble reciting the facts in the case, and the resolution directing the Sergeant-at-Arms to make a careful return to said writ, setting out the causes of the detention of said Kilbourn, and to retain the custody of his body, and not to produce it before the said judge or court without further order of the House, 545. Mr. Lynde, of Wisconsin, submits a substitute for said resolution directing the Sergeant-at-Arms "to make a careful return to the writ of habeas corpus in the case of Hallet Kilbourn, that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Kilbourn before said court when making such return as required by law," 545. Mr. Jenks, of Pennsylvania, submits an amendment to the resolution reported by Mr. Hurd, inserting after the word "Kilbourn" the words, "and the irregularity of issuing the writ without a previous order nisi, or rule to show cause," 545. (April 17, 1876.) House resumes consideration of said subject, and Mr. Jenks withdraws his amendment, 545. Mr. J. Randolph Tucker, of Virginia, moved an amendment striking out all after the word "Kilbourn," where it occurs before the word therefore, at the close of the preamble, and inserting in lieu thereof the following words: "And whereas the facts stated in the petition and complaint of said Kilbourn present the question whether the said writ could lawfully and properly be issued, and whether the same was not therefore, improvidently awarded: Therefore, resolved, That the Sergeant-at-Arms be directed to appear by counsel before the said court and make a motion to quash or dismiss said writ, or take such other procedure as he shall be advised is proper to raise the question of the legality and propriety of the issue of said writ, upon the facts stated in the petition or complaint, and as preliminary to any return to the same; and in the meantime to retain the custody of the body of said Kilbourn, and not to produce it under the order of said writ without the further order of the House," 545, 546. Debated and disagreed to, 546. Mr. Lynde's substitute agreed to, and report of Judiciary Committee, as amended, agreed to, 546. (April 28, 1876.) Speaker lays before House letter from the Sergeant-at-Arms inclosing decision of D. K. Cartter, chief justice of the supreme court of the District of Columbia, in the matter of Hallet Kilbourn's petition for the writ of habeas corpus, 546. Said decision sustaining said writ and delivering said Kilbourn to said court for trial, given in full, 547-552. For continuation of case in another form see decision of Supreme Court in case of *Kilbourn v. Thompson* (103 U. S. Reports S. C. 1, pp. 168), 708. References to debates in House of Representatives on this case and general subject of powers of Congress or either House in respect to contumacious witnesses, 552. Statement that neither Journal nor Congressional Record show that said committee reported said Kilbourn to the House as a contumacious witness, or that the Speaker reported to the House his certification of said Kilbourn to the district attorney for the District of Columbia under the statute, 552. On motion of Mr. Tucker, Messrs. Glover of Missouri, New of Indiana, and Smith of Pennsylvania, "members of the House and of said select committee," summoned to appear before the grand jury of said court for said District, were "authorized to appear and testify under the said summons," 552.

XXV.

PROTECTION OF WITNESSES BEFORE EITHER HOUSE OF CONGRESS OR COMMITTEES THEREOF—HOUSE OF REPRESENTATIVES, FORTY-FOURTH CONGRESS, FIRST SESSION, MICHAEL C. KERR, OF INDIANA, SPEAKER.

IN RE CASE OF WILLIAM W. BELKNAP.—Statement of case, 553. Resolution referred to Judiciary Committee directing it to prepare and report articles of impeachment against William W. Belknap, Secretary of War, 553. Mr. Knott, of Kentucky, from said committee * * * reports two bills, H. R. 2572, "to protect witnesses who shall be required to testify in certain cases," and H. R. 2573, "in relation to witnesses," 553. Debate on resolution and bills 553-558. First-named bill passed and second-named bill recommitted, 558. No action on said second-named bill, 558. Referred to the Committee on the Judiciary, in the Senate, and reported adversely by Mr. Edmunds, of Vermont, chairman, Messrs. Thurman of Ohio and Stevenson of Kentucky submitting their views, as a minority, and proposing a substitute for the bill, 558. Report of committee, 558-565. Minority views, 565-567. Substitute proposed, 565. Bill taken up and made "unfinished business," but not acted on or debated thereafter, 567.

XXVI.

PRIVILEGES OF MEMBERS—POWER OF THE HOUSE OF REPRESENTATIVES IN RESPECT TO ACTS PERFORMED BY A MEMBER BEFORE HIS ELECTION—FORTY-FOURTH CONGRESS, FIRST SESSION, MICHAEL C. KERR, OF INDIANA, SPEAKER.

CASES OF WILLIAM S. KING AND JOHN G. SCHUMAKER.—Statement of cases, 568. Report of the Committee on the Judiciary, by Mr. Lynde, of Wisconsin; discusses, first, the question of the power of the House of Representatives to take jurisdiction of violations of law or offenses committed against a previous Congress, and, second, as to the power and propriety of said House to interpose in respect to such acts or offenses which are made crimes by statute, and were then before a court of competent jurisdiction by reference by the House of Representatives, 568. References to cases of Humphrey Marshall, a Senator from Kentucky, and O. B. Matteson, a Representative from New York, 568. Report of committee and views of minority given in full, 568-570.

XXVII.

PRIVILEGES OF MEMBERS OF CONGRESS—EXEMPTION FROM LEGAL PROCESS WHILE EN ROUTE FOR THE PURPOSE OF ATTENDING (OR RETURNING FROM) A SESSION OF CONGRESS—FIFTIETH CONGRESS, FIRST SESSION, JOHN G. CARLISLE, OF KENTUCKY, SPEAKER.

CASE OF MINER v. MARKHAM (H. H. Markham, a Representative from the State of California).—Statement of case, 572. Decision of Judge Dyer, United States district judge for the eastern district of Wisconsin, 572-576.

XXVIII.

SILVER POOL INVESTIGATION—ALLEGATION THAT TWELVE SENATORS AND FIFTEEN REPRESENTATIVES WERE ADMITTED TO PARTNERSHIP IN VARIOUS "SILVER POOLS" PENDING PASSAGE OF THE ACT OF JULY 14, 1890, DIRECTING THE PURCHASE OF SILVER BULLION AND ISSUE OF TREASURY NOTES THEREON—HOUSE OF REPRESENTATIVES, FIFTY-FIRST CONGRESS, SECOND SESSION, THOMAS B. REED, OF MAINE, SPEAKER—CONTUMACIOUS WITNESS.

CASE OF JAMES B. OWNBEY.—Statement of case, 577. Decision of House that a resolution, based on a Washington dispatch published in the St. Louis Globe-Democrat, making above stated allegation, after Washington correspondents of said paper had declined under oath before the Committee on Rules to state or disclose the authorship of said article, or give names of persons who could furnish information on the subject, presented a "question of privilege," 577. Reference to proceedings and debates in Congressional Record, 577. Statement as to resolution submitted by Mr. Dockery, of Missouri, for appointment of select committee of five members to inquire into all the facts and circumstances connected with "silver pools," in which Senators and Representatives were alleged to be interested, etc., amended on motion of Mr. Rogers, of Arkansas, and adopted, 577. Committee appointed, 577. Report of committee by Mr. Dingley, of Maine, given in full, 577-582. No action thereon recommended or taken, 582.

XXIX.

ATTEMPTS AT BRIBERY, ETC., IN CONNECTION WITH THE WILSON-GORMAN TARIFF BILL—ALLEGED CORRUPT AND IMPROPER ACTION TO INFLUENCE LEGISLATION IN RESPECT TO SAID BILL—CONTUMACIOUS WITNESSES—PUBLICATIONS IN THE NEW YORK SUN AND PHILADELPHIA PRESS—UNITED STATES SENATE, FIFTY-THIRD CONGRESS, SECOND SESSION, ADLAI E. STEVENSON, OF ILLINOIS, VICE-PRESIDENT.

CASES OF ELISHA J. EDWARDS, JOHN S. SHRIVER, ELVERTON R. CHAPMAN, HENRY O. HAVEMEYER, JOHN E. SEARLES, JOHN W. MACARTNEY, AND ALLEN L. SEYMOUR.—Senator Lodge, of Massachusetts, on May 16, 1894, submits two preambles and a resolution, the preambles reciting the statement in the New York Sun "that bribes had been offered to certain Senators to induce them to vote against the (then) pending tariff bill," and the statement in a signed article in the Philadelphia Press "that the sugar schedule has been made up as it now stands in the proposed amendment, in consideration of large sums of money paid for campaign purposes of the Democratic party"; and the resolution providing for the appointment of a special committee of five Senators "to investigate these charges and with power to send for persons and papers," 583. On the following day said preambles and resolution were considered and amended so as "to inquire further whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes, or to secure or defeat legislation, and whether any Senator has been or is speculating in what are known as 'sugar stocks' during the consideration of the tariff bill now before the Senate," 583. Second resolution added, providing that said committee be authorized "to investigate and report upon any charge or charges which may be filed before it, alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation," 583. Appointment of Senators Gray of Delaware, Lindsay of Kentucky, Lodge of Massachusetts, Davis of Minnesota, and Allen of Nebraska, as said special committee, 583. May 25, Senator Gray makes a unanimous report (No. 436) in respect to Senators Hunton and Kyle, saying that nothing was found in the investigation "to impeach in the least degree, the honor or character of either of said Senators," 584. On May 29, Senator Gray made a further unanimous report (No. 457) in respect to two contumacious witnesses, Elisha J. Edwards and John S. Shriver, in which it was stated that "each of the questions put to each of said witnesses was a proper question, and pertinent to the question under inquiry before the committee, and was necessary to make the examination ordered by said resolution of the Senate, and that each of said witnesses is in contempt of the Senate and merits to be dealt with for his misconduct; and that each of said witnesses, by his various refusals to answer the questions as herein set forth, has violated the provisions of that certain act of Congress in such cases made and provided, being chapter 7 of the Revised Statutes of the United States," 584. Said chapter, being sections 102, 103, 104, quoted in full, 584. Report concludes as follows: "Wherefore, the committee report and request that the President of the Senate certify as to each witness his aforesaid failure to testify and his aforesaid refusals to answer, and all the facts herein, under the seal of the Senate, to the United States district attorney for the District of Columbia, to the end that each of said witnesses may be proceeded against in manner and form provided by law, 584. Senator Hill, of New York, raises the question of "reception" of said report," 584. Debate, 584. Senator Gray urges that the subject-matter of the report made it a "privileged question," and could interrupt the ordinary legislative proceedings of the Senate, 584. Report read and the Presiding Officer (Senator Faulkner, of West Virginia), after debate on the questions of order presented, rules that the report was privileged, and "was not such a report as calls for any action on the part of the Senate," 584. Senator Hill appeals from said decision, which appeal, after debate, was, on motion of Senator Harris, of Tennessee, laid on the table, 584. The Vice-President (President of the Senate) thereupon certified the said witnesses to the district attorney for the District of Columbia, under the statute, 584. On June 12, Senator Gray made a further unanimous report (No. 477) in respect to Elverton R. Chapman, a contumacious witness, in which the same recommendation was made as in the cases of Edwards and Shriver, 585. Senator Allen adds his views and submits a preamble and resolution, the latter directing the President of the Senate to issue his warrant in due form, directed to the Sergeant-at-Arms, commanding him forthwith to arrest and bring to the bar of the Senate the body of said Chapman, to show cause why he should not be punished for contempt, and in the meantime to keep the said Chapman in custody

to await the further order of the Senate, 585. No action taken thereon and said witness certified to the said district attorney under the statute, 585. On June 21, Senator Davis submits two reports (Nos. 485 and 486) in respect to Henry O. Havemeyer and John E. Searles, signed by himself and Senators Lodge and Allen, making the same recommendation as to each witness made in the case of Chapman, 585. Senator Gray, on behalf of himself and Senator Lindsay, submits views of the minority, stating the grounds of their dissent from the report of the majority of the committee, 585. Said views given in full, 585. Senator Allen submits same recommendation as that made in respect to the witness Chapman, but no action taken thereon, 586. Proceedings in Senate on presentation of said report stated, 586. Senator Gray asks that "the usual proceedings be taken," to which request Senator Hill objects and moves that said report "be not received," 586. After debate, Senator Harris makes point of order that said motion was not in order, 586. After debate, order made to print the report in the Record and in document form, leaving the motion of Senator Hill pending, 586. Debate thereon closed by an executive session, and subject not afterwards considered, 586. On same day Senator Gray submits the unanimous report of the committee (No. 487) as to John W. Macartney, and on August 2 submits the unanimous report of the committee as to Allen L. Seymour, recommending that the same action be taken as to each witness as in the previous cases, which action was duly taken, the President of the Senate certifying the cases to the district attorney under the statute, 586. Senator Allen submits, in addition, the same recommendation as in the previous cases, no action being taken by the Senate thereon, 586. On August 2, Senator Gray submits final and unanimous report (No. 606) of the committee and asks that it be discharged from further consideration of the subject, 586. Additional views submitted by Senator Lodge on behalf of Senator Davis and himself, and by Senator Allen on his own behalf, which were ordered printed, 586. Senator Chandler, of New Hampshire, objects to the request that special committee be discharged from further consideration of the subject, and asks that said request go over for the present, 586. No objection being made to said last-named request, the President of the Senate announces that "it will be so ordered," 586. List of said reports, 586. (For proceedings in and action of the Supreme Court and the Court of Appeals of the District of Columbia, together with the decision of the Supreme Court of the United States, in respect to the several writs of *habeas corpus* prayed for by the aforesaid contumacious witnesses, see p. 797-864.)

For legal proceedings, including the indictment against Chapman—the other indictments being substantially the same—the demurrer of Messrs. Shellabarger and Wilson, attorneys for said Chapman; the decision of Justice Cole overruling said demurrers; the application to the court of appeals of the District of Columbia for allowance of an appeal to said court; the briefs of District Attorney Birney and Assistant Attorney-General Conrad and of Messrs. Shellabarger and Wilson; the opinion of said Court of Appeals affirming the judgments; the indictments against Seymour, Edwards, Shriver, Searles, and Henry O. Havemeyer; the briefs of Messrs. A. J. Dittenhoefer, Nathaniel Wilson, John E. Parsons, and George F. Edmunds; the opinion of Justice Cole in said cases overruling said demurrers and requiring the defendants to plead; the application to the Supreme Court of the United States for leave to file a petition for the issuance of a writ of *habeas corpus*; briefs therein, and, finally, the decision of the Supreme Court refusing the application. See "Judicial Decisions," pp. 797 to 864. (See also Table of, p. 587).

JUDICIAL DECISIONS.

XXX.

UNITED STATES SUPREME COURT—FEBRUARY TERM, 1821 (6 WHEATON, 204)—ANDERSON v. DUNN (JOHN ANDERSON v. THOMAS DUNN)—ERROR TO THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

Statement of case in syllabus, viz: To an action of trespass against the Sergeant-at-Arms of the House of Representatives of the United States, for an assault and battery and false imprisonment, it is a legal justification and bar, to plead, that a Congress was held and sitting, during the period of the trespasses complained of, and that the House of Representatives had resolved that the plaintiff had been guilty of a breach of the privileges of the House, and of a high contempt of the dignity and authority of the same; and had ordered that the Speaker should issue his warrant to the Sergeant-at-Arms, commanding him to take the plaintiff into custody, wherever to be found, and to have him before the said House, to answer to the said charge; and that the Speaker did accordingly issue such a warrant, reciting the said resolution and order, and commanding the Sergeant-at-Arms to take the plaintiff into custody, etc., and deliver the said warrant to the

defendant. By virtue of which warrant the defendant arrested the plaintiff, and conveyed him to the bar of the House, where he was heard in his defense, touching the matter of the said charge, and the examination being adjourned from day to day, and the House having ordered the plaintiff to be detained in custody, he was accordingly detained by the defendant, until he was finally adjudged to be guilty, and convicted of the charge aforesaid, and ordered to be forthwith brought to the bar, and reprimanded by the Speaker, and then discharged from custody; and after being thus reprimanded, was actually discharged from the arrest and custody aforesaid, 588. (See also p. 30 for history of case in the House of Representatives.) Defendant's plea, as pleaded and adjudged good upon general demurrer in the circuit court, 588-592. Points made by Mr. ——— Hall for the plaintiff in error, 592-594. Argument of Attorney-General Wirt and Walter Jones, contra, "that the only question before the court was, whether the House of Representatives could exercise the power in question, either as incidental to its legislative or judicial capacity," 594-596. Opinion of the court by Mr. Justice Johnson affirming the decision of the circuit court, 596-601.

XXXI.

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA FOR THE COUNTY OF WASHINGTON, MARCH TERM, 1848, JOHN NUGENT v. ROBERT BEALE, SERGEANT-AT-ARMS OF THE UNITED STATES SENATE—DECIDED MAY 11, 1848—PETITION FOR DISCHARGE ON WRIT OF HABEAS CORPUS. OPINION OF CHIEF JUSTICE CRANCH.

Syllabus of decision, (1) Every court, including the Senate and House of Representatives, is the sole judge of its own contempts; and in case of commitment, for contempt, in such case, no other court can have a right to inquire *directly* into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus. (2) The warrant of commitment need not set forth the particular facts which constitute the alleged contempt. (3) The Senate of the United States has power to punish for contempts of its authority in cases of which it has jurisdiction, and an inquiry whether any person, and who, had violated the rule of the Senate which requires that all treaties laid before them should be kept secret until the Senate should take off the injunction of secrecy is a matter within the jurisdiction of the Senate. (4) The Senate of the United States has a right to hold secret sessions whenever in its judgment the proceeding shall require secrecy, and may pronounce judgment in secret session for a contempt which took place in secret session, 601 (see also p. 78 for statement of case in the Senate). Joseph H. Bradley and J. M. Carlisle for petitioner, R. S. Coxe for the Senate, 601. Statement as to petition for writ of habeas corpus, its issue, return, and warrant, 601, 602. Argument by counsel, 603. Opinion of the court by Chief Justice Cranch, denying the writ and remanding the prisoner, 603-620. (See statement of proceedings in the Senate, 78.)

XXXII.

CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA—PACIFIC RAILWAY COMMISSION—APPLICATION OF, TO COMPEL LELAND STANFORD TO ANSWER CERTAIN INTERROGATORIES TO HIM PROPOUNDED BY SAID COMMISSION—OPINION BY ASSOCIATE JUSTICE FIELD, AUGUST TERM, 1887. CONCURRING OPINION BY JUSTICES SAWYER AND SABIN. DISSENTING OPINION BY JUSTICE HOFFMAN.

Statement of case, application, arguments, briefs, etc., and the following syllabus, viz: (1) The Pacific Railway Commission is not a judicial body and possesses no judicial powers under the act of Congress of March 3, 1887, creating it, and can determine no rights of the Government or of the corporations whose affairs it is appointed to investigate. (2) Congress can not compel the production of private books and papers of citizens for its inspection, except in the course of judicial proceedings, or in suits instituted for that purpose, and then only upon averments that its rights in some way depend upon evidence therein contained. (3) The courts are open to the United States as to private parties to secure protection for their legal rights and interests, by regular proceedings. (4) Congress can not empower a commission to investigate the private affairs, books, and papers of the officers and employees of corporations indebted to the Government as to their relations to other companies with which such corporations have had dealings, except so far as such officers and employees are willing to submit the same for inspection; and the investigation of the Pacific Railway Commission into the affairs of officers and employees of the Pacific railway companies under the act of March 3, 1887, is limited to that extent. (5) The United States have no interest in expenditures of the Central Pacific Railroad Company under vouchers which have not been charged against the Government in the accounts between them; and the Pacific

Railway Commission under the act of Congress of March 3, 1887, has no power to investigate such expenditures against the will of the company and its officers. (6) The judicial power of the United States is limited to "cases" and "controversies" enumerated in Article III, section 1, of the Constitution as modified by the eleventh amendment, and to petitions on habeas corpus, and can not be extended by Congress; and by such "cases" and "controversies" are meant the claims of litigants brought for determination by regular judicial proceedings established by law or custom. (7) The judicial department is independent of the legislative, in the Federal Government, and Congress can not make the courts its instruments in conducting mere legislative investigations; (8) The power of United States courts to authorize the taking of depositions on letters rogatory from courts of foreign jurisdictions exists by international comity; but no comity of any kind can be invoked by a mere investigating committee appointed by Congress. (9) The Central Pacific Railroad Company is a State corporation not subject to Federal control, any further than a natural person similarly situated would be. Per Sawyer, J. (10) The Central Pacific Railroad Company is absolute owner of the lands and bonds granted to it by the Government, having complied with the act making the grant, subject to the lien of the Government to secure its advances, in the same way and to the same extent as a natural person in like situation. Per Sawyer, J. (11) The relation of creditor and debtor exists between the United States and the Central Pacific Railroad Company, under the act granting aid to the latter, with like force and effect as if both were natural persons, the relation being private and having nothing to do with the power of the Government as sovereign. Per Sawyer, J. (12) The United States, as creditor, can not institute a compulsory investigation into the private affairs of the Central Pacific Railroad Company, or require it to exhibit its books and papers for inspection in any other way, or to any greater extent, than would be lawful in the case of private creditors and debtors. Per Sawyer, J. (13) The United States, as creditor, have the same remedy as a private creditor, and no other, to compel payment of any moneys due it from the Central Pacific Railroad Company, as their debtor, or to prevent the latter from wasting its assets before the debt matures, and that remedy, if any, must be by a regular judicial proceeding in due course of law, and Congress has no power to institute a roving, legislative inquisition into the affairs of the company to ascertain what it has done or is doing with its money. Per Sawyer, J. Petition of Robert E. Pattison, E. Ellery Anderson, and David T. Littler, commissioners, etc., 621-625. Answer of Leland Stanford, 626-633. Brief for the Commission by John T. Corey, United States attorney, and Henry C. McPike, assistant United States attorney, counsel for petitioners, 634-648. Brief of Messrs. McAllister and Bergin for Leland Stanford, 649-654. Brief of L. D. McKissick for Leland Stanford, 655-660. Argument of Mr. McKissick, 660-671. Statement of facts, 673-679. Opinion by Mr. Associate Justice Field, 679-687. Concurring opinion by Judge Lorenzo Sawyer, circuit judge, 687-694. Concurring opinion by George M. Sabin, district judge of Nevada, 695-696. Dissenting opinion by Judge Hoffman, circuit judge, 697-706.

XXXIII.

UNITED STATES SUPREME COURT, OCTOBER TERM, 1880—ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA—KILBOURN v. THOMPSON—OPINION BY MR. JUSTICE MILLER. U. S. REPORTS S. C., 103, p. 168.

[For history of case in House of Representatives and Supreme Court of the District of Columbia, see pp. 536-552.]

Syllabus, (1) K., for refusing to answer certain questions put to him as a witness by the House of Representatives of the Congress of the United States, concerning the business of a real estate partnership of which he was a member, and to produce certain books and papers in relation thereto, was, by an order of the House, imprisoned for forty-five days in the common jail of the District of Columbia. He brought suit to recover damages therefor against the Sergeant-at-Arms, who executed the order, and the members of the committee, who caused him to be brought before the House, where he was adjudged to be in contempt of its authority: *Held*, That, although the House can punish its own members for disorderly conduct, or for failure to attend its sessions, and can decide cases of contested elections and determine the qualifications of its members, and exercise the sole power of impeachment of officers of the Government, and may, where the examination of witnesses is necessary to the performance of these duties, fine or imprison a contumacious witness, there is not found in the Constitution of the United States any general power vested in either House to punish for contempt. (2) An examination of the English Parliament and the decisions of the English courts shows that the power of the House of Commons, under the laws and customs of Parliament to punish

for contempt rests upon principles peculiar to it, and not upon any general rule applicable to all legislative bodies. (3) The Parliament of England, before its separation into two bodies, since known as the House of Lords and the House of Commons, was a high court of judicature—the highest in the realm—possessed of the general power incident to such a court of punishing for contempt. On its separation the power remained with each body, because each was considered to be a court of judicature and exercised the functions of such a court. (4) Neither House of Congress was constituted a part of any court of general jurisdiction, nor has it any history to which the exercise of such power can be traced. Its power must be sought alone in some express grant in the Constitution, or be found necessary to carry into effect such powers as are there granted. (5) The court, without affirming that such a power can arise in any case other than those already specified, decides that it can exist in no case where the House, attempting to exercise it, invokes its aid in a matter to which its authority does not extend, such as an inquiry into the private affairs of the citizens. (6) The Constitution divides the powers of the Government which it establishes into the three departments—the executive, the legislative, and the judicial—and unlimited power is conferred on no department or officer of the Government. It is essential to the successful working of the system that the lines which separate those departments shall be clearly defined and closely followed, and that neither of them shall be permitted to encroach upon the powers exclusively confided to the others. (7) That instrument has marked out, in its three primary articles, the allotment of power to those departments, and no judicial power, except that above mentioned, is conferred on Congress or on either branch of it. On the contrary, it declares that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish. (8) The resolution of the House, under which K. was summoned and examined as a witness, directed its committee to examine into the history and character of what was called “the real-estate pool” of the District of Columbia; and the preamble recited, as the grounds of the investigation, that Jay Cooke & Co., who were debtors of the United States, and whose affairs were then in litigation before a bankruptcy court, had an interest in the pool or were creditors of it. The subject-matter of the investigation was judicial, and *not* legislative. It was then pending before the proper court, and there existed no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently no authority to compel a witness to testify on the subject. (9) It follows that the order of the House declaring K. guilty of a contempt of its authority, and ordering his imprisonment by the Sergeant-at-Arms, is void, and affords the latter no protection in an action by K. against him for false imprisonment. (10) *Anderson v. Dunn* (6 Wheat., 204) commented on, and some of the reasoning of the opinion overruled and rejected. (11) The provision of the Constitution, that, for any speech or debate in either House, the members shall not be questioned in any other place, exempts them from liability elsewhere for any vote, or report to, or action in their respective Houses, as well as for oral debate. Therefore the plea of the members of the committee that they took no part in the actual arrest and imprisonment of K., and did nothing in relation thereto beyond the protection of their constitutional privilege, is, so far as they are concerned, a good defense to the action, 708, 709. Statement of facts, 709–713. Brief of Mr. Charles A. Eldredge, Mr. Enoch Totten, and Mr. Noah L. Jeffries, for the plaintiff in error, 713, 714. Brief of Mr. Walter H. Smith and Mr. Frank Hurd, contra, 714, 715. Opinion of the court by Justice Miller, 715–729. For previous action of House of Representatives, see pages 536–546. For statement of case in the supreme court of the District of Columbia, before Chief Justice Cartter, sitting in chambers, see pages 547, 548. For opinion of Justice Cartter, see pages 549–551.

XXXIV.

**THE COURT OF APPEALS OF THE STATE OF NEW YORK, OCTOBER TERM, 1885—
THE PEOPLE EX REL. WILLIAM M'DONALD, RESPONDENT, v. WILLIAM H. KEELER,
AS SHERIFF, ETC., APPELLANT—DECISION BY JUSTICE RAPALLO.**

Appeal from order of the general term of the Supreme Court, in the third judicial department, which reversed an order of the court of oyer and terminer in and for the county of Albany refusing to discharge relator on habeas corpus from imprisonment, and directed his discharge, 730, 731. Brief of Nathaniel C. Moak for appellant, 731. Brief of Frederick W. Whitridge for appellant, 731, 732. Brief of Thomas C. E. Ecclesine and Hamilton Harris for respondent, 732, 733. Opinion of Justice Rapallo, 733–743.

Syllabus: As by the penal code (sec. 724) it is declared that it does not affect "any power conferred by law upon any public body * * * to impose or inflict punishment for a contempt," the provision of the Revised Statutes conferring the power upon either house of the legislature to punish as for a contempt a witness refusing to answer before it or before a committee in legislative proceedings (1 Rev. Stat. 154, sec. 13, sub. 4), was not abrogated by the two provisions of the penal code, one (sec. 69) making such refusal a misdemeanor, the other (sec. 719) declaring that offenses specified in said code, committed after its going into effect, must be punished according to its provisions "and not otherwise." So, also, as by said code (sec. 677) it is declared that "an act or omission which is made criminal and punishable in different ways by different provisions of law may be punished under any one of those provisions, but not under more than one," the rule that no person can be punished twice for the same offense does not require the abrogation of said provision of the Revised Statutes. The said provision and the subsequent ones providing for its enforcement are not violative of the constitutional provisions declaring that no person shall be deprived of life, liberty, or property without due process of law; as, if those provisions were within the power of the legislature to enact, proceedings under them are "due process of law." The legislature had power to enact said provisions; such legislature is not prohibited or restrained by the State constitution or the Constitution of the United States, and except as thus limited, the State legislature possesses the whole legislative power of the State. Notwithstanding the division of powers between coordinate branches of the State government, and the vesting of the judicial powers in the courts, certain powers in their nature judicial belong to the legislature, and a statute is not necessarily void which involves action on the part of either house in its nature judicial. Where the statute relates to the proceedings of the legislative body itself and is necessary and appropriate to enable it to perform its constitutional functions, it is not such an invasion of the province of the judiciary as to bring it within any implied prohibition of the Constitution. The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is necessary and belongs to the legislature, and statutory provisions, such as are contained in the Revised Statutes (1 Rev. Stat. 158, sec. 1 et seq.), authorizing legislative committees to take testimony and summon witnesses, are within the limits of legislative powers, as is also a statute authorizing either house to enforce its process by imprisonment of a recusant witness. It seems this power may only be exercised where the investigation which the committee was conducting was a legislative proceeding which the house was authorized to institute. It seems, also, that an investigation instituted for the mere purpose of investigation or for political purposes, not connected with any intended legislation or other matters upon which the house can act, is not a legislative proceeding. Where, however, public institutions belonging to the State or public officers are ordered to be investigated, it is to be presumed that it is with a view of some legislative action in regard to them. A witness summoned before a legislative committee has no constitutional or legal right to be attended by, or to the aid of, counsel on his examination. The provision of the State constitution, declaring that "in any trial in any court whatever the party accused shall be allowed to appear and defend * * * with counsel," has no application to a mere witness who is not a party. The preamble to a resolution of investigation adopted by the senate recited, in substance, that charges of fraud and irregularity had been made against the commissioner of public works of the city of New York, and that it was of vital importance to the taxpayers of the State that the heads of all public departments should be above reproach; by the resolution a committee was authorized to investigate said department, to report the result thereof, "and its recommendations concerning the same:" *Held*, That the terms of the resolution indicated that some legislative action was in contemplation to guard against frauds or irregularities, if such were found to exist which could be prevented or rendered more difficult by legislation; and that it was to be presumed the investigation was for this purpose. *Kilbourn v. Thompson* (103 U. S., 168), distinguished. The relator, a witness summoned before said investigating committee, was allowed to be attended and advised by counsel; he having declined to answer certain questions put to him on the ground of the advice of counsel, the committee directed its chairman to no longer recognize his right to have counsel present; thereupon the counsel instructed the witness to withdraw from the committee, which he did without its permission, after being advised that his examination was not concluded, warned not to leave, and informed that if he did so it was at his peril: *Held*, That it was immaterial whether the questions which the witness refused to answer were proper or not, his refusal to remain and submit to further examination was a contempt, subjecting him to punishment. *People ex rel. McDonald v. Keeler* (32 Hun., 563), reversed. Statement of case, 731. *Nathaniel C. Moak and Frederick W. Whitridge for appellant*, 731. *Thomas E. C. Ecclesine and Hamilton Harris for respondent*, 732, 733. Decision by Justice Rapallo, 733-743.

XXXV.

UNITED STATES SUPREME COURT, OCTOBER TERM 1891—CHARLES COUNSELMAN, APPELLANT, v. FRANK HITCHCOCK, MARSHAL OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS—DECISION BY MR. JUSTICE BLATCHFORD. U. S. REPORTS S. C., 142, p. 547.

Syllabus, (1) The privilege given by the fifth amendment to the Constitution, that no person shall be compelled in any criminal case to be a witness against himself, extends to a proceeding before a grand jury. (2) In an investigation by a grand jury of alleged violations of the act of Congress to regulate commerce of February 4, 1887, against a railway company, a person engaged in commission business is privileged, under the fifth amendment to the Constitution, from answering as a witness as to whether he had obtained a rate of transportation of grain on any railroad coming from a point outside of the State, less than the tariff or open rate, and questions of a similar character, if he declines to answer on the ground that his answer might tend to criminate him. (3) Section 800 of the Revised Statutes, which provides that the evidence of a person shall not be used against him in any proceeding for a crime or penalty, or forfeiture, does not take away his privilege, given by the Constitution, that he shall not be compelled in any criminal case to be a witness against himself. (4) A witness is protected by the constitutional provision from being compelled to disclose the circumstances of his offense, or the sources from which or the means by which evidence of its commission, or of his connection with it, may be obtained or made effectual for his conviction. (5) Legislation can not abridge a constitutional privilege, and can not replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. (6) No statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. (7) Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. (8) In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates, 744. Appeal from a judgment of the circuit court of the United States for the northern district of Illinois, dismissing a petition for a writ of habeas corpus and discharging the writ, 744. Brief of Messrs. John N. Jewett and James C. Carter for appellant, 744, 745. Brief of Messrs. A. X. Parker, Assistant Attorney-General, and G. M. Lambertson, for appellee, 745, 746. Opinion by Mr. Justice Blatchford, 746-763.

XXXVI.

UNITED STATES SUPREME COURT, OCTOBER TERM, 1893—THE INTERSTATE COMMERCE COMMISSION, APPELLANT, v. W. G. BRIMSON ET AL.—DECISION BY MR. JUSTICE HARLAN. U. S. REPORTS S. C., 154, p. 447.

Syllabus, act to regulate commerce—power of Congress—appropriate means—judiciary—compelling testimony before Interstate Commerce Commission—due process of law. (1) The twelfth section of the act of February 4, 1887, as amended in 1889 and 1891, is constitutional and valid, so far as it authorizes or requires the circuit courts of the United States to use their process in aid of inquiries before the Interstate Commerce Commission. (2) Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed. (3) Congress may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to carry into effect and accomplish the objects of a power given to it by the Constitution. (4) The judiciary can only inquire whether the means devised by Congress in the execution of a power granted are forbidden by the Constitution. (5) A proceeding to compel the attendance of a witness before the Interstate Commerce Commission, or to require him to answer questions put to him, or to compel the production of books, documents, or papers in his possession is a case of which, under the Constitution, a court of the United States may take cognizance. (6) In matters of contempt, a jury is not required by "due process of law;" courts possess the power to punish for contempt, 764. Statement of case, 764. Brief of Messrs. Lawrence Maxwell, jr., Solicitor-General, and George F. Edmunds for appellant, 765-766. Brief of Messrs. E. Parmelee Prentice, James C. Hutchins, and Charles S. Holt for appellees, 767-769. Opinion by Mr. Justice Harlan, 769. Dissenting, Mr. Justice Brewer, the Chief Justice, and Mr. Justice Jackson; Mr. Justice Field taking no part in the consideration or decision of the case.

XXXVII.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, FEBRUARY TERM, 1894—UNITED STATES v. JAMES ET AL.—DECISION BY JUDGE GROSSCUP.

Syllabus; Constitutional law—Interstate-commerce act—Compelling self-incrimination. Act of February 11, 1893, which declares that no person shall be excused from testifying or producing documents in proceedings based upon the interstate-commerce act on the ground that it may tend to criminate him, but that he shall not be prosecuted or punished on account of any matter concerning which he may testify, violates the fourth and fifth amendments to the United States Constitution, which declare that the right of the people to be secure against unreasonable searches and seizures shall not be violated, and that no person shall be compelled in any criminal case to be a witness against himself, 789. Rule to punish James G. James and Gordon McLeod for contempt of court in refusing to answer questions asked by the grand jury. Rule discharged, 789. T. E. Milchrist, United States district attorney. J. N. Jewett and Aldace F. Walker for defendants, 789. Opinion by Judge Grosscup, 789-796.

XXXVIII.

SUPREME COURT OF THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1894—OPINION OF ASSOCIATE JUSTICE C. C. COLE IN THE CASES OF ELVERTON R. CHAPMAN AND JOHN W. MARCARTNEY FOR REFUSING TO ANSWER QUESTIONS BEFORE A SPECIAL COMMITTEE OF THE SENATE—ALSO HIS OPINION IN CASES OF ALLEN L. SEYMOUR, ELISHA J. EDWARDS, JOHN S. SHRIVER, JOHN E. SEARLES, AND HENRY O. HAVEMEYER—ALSO PROCEEDINGS IN THE U. S. SUPREME COURT ON APPLICATION OF ELVERTON R. CHAPMAN AND JOHN S. SHRIVER FOR LEAVE TO FILE PETITIONS FOR WRITS OF HABEAS CORPUS, AND OPINION OF CHIEF JUSTICE FULLER DENYING LEAVE, MR. JUSTICE FIELD DISSENTING.

For history of cases in the Senate, see pages 583-586. Statement as to cases in court, 797. Stipulation, 797. Indictment against Chapman, 797-803. Demurrer of counsel, Messrs. Shellabarger and Wilson, 803-805. Opinion of Justice Cole, 805-811. Application to Court of Appeals of the District of Columbia for allowance of an appeal to said court from said decision granted, 811. Messrs. A. A. Birney, district attorney for said district, and Holmes Conrad, Assistant Attorney-General, submit brief on behalf of the United States, 811-817. Messrs. Shellabarger and Wilson submit brief on behalf of defendants, 818-821. Mr. Birney files supplemental brief, 821, 822. Opinion of Court of Appeals affirming judgments entered on said demurrers, 822-828. Indictments found against Allen L. Seymour, Elisha J. Edwards, and John S. Shriver, of similar character, 828. Mr. A. J. Dittenhoefer, attorney for Edwards, submits demurrer to indictment, 828, 829. Indictments returned by same grand jury against Henry O. Havemeyer, president, and John E. Searles, secretary and treasurer, of the American Sugar Refining Company, 830. Nathaniel Wilson, attorney for said defendants, submits demurrers to said indictments, 830-832. Mr. John E. Parsons, of counsel for said defendants, submits brief, 832-838. Mr. George F. Edmunds, also of counsel for defendants, submits brief, 838-841. Mr. A. J. Dittenhoefer, attorney for the defendants, John S. Shriver and Elisha J. Edwards, submits brief, 841-854. Opinion of Associate Justice Cole of the Supreme Court of the District of Columbia upon the several demurrers filed in said cases, viz: The United States v. Allen L. Seymour, Elisha J. Edwards, John S. Shriver, John E. Searles, and Henry O. Havemeyer, 855-857. Said demurrers overruled and defendants required to plead, 857. Application made to the Supreme Court of the United States by Messrs. Shellabarger and Wilson, on behalf of Elverton R. Chapman, for leave to file a petition praying that the writ of habeas corpus might issue from said court, etc., to produce said petitioner before said court, 857. Brief submitted by Messrs. Shellabarger and Wilson, 857, 858. Mr. Lawrence Maxwell, jr., Solicitor-General of the United States, submits objections, 858, 859. Supplemental brief in answer to said objections filed by Messrs. Shellabarger and Wilson and Mr. George F. Edmunds, 859-861. Application of Mr. A. J. Dittenhoefer, attorney for John S. Shriver, for leave to file a similar petition, etc., 861, 862. Supreme Court of the United States denies the said applications, 862. Opinion by Chief Justice Fuller, 862-864. Associate Justice Field dissents.

BREACH OF PRIVILEGE OF THE HOUSE OF REPRESENTATIVES— ATTEMPT TO BRIBE REPRESENTATIVES.

FOURTH CONGRESS, FIRST SESSION, JONATHAN DAYTON, OF NEW JERSEY, SPEAKER.

CASES OF ROBERT RANDALL AND CHARLES WHITNEY.

These cases were the first arising in either House of Congress in which the power to summon witnesses, compel them to testify, and to inflict punishment, either by fine or imprisonment, or both, was asserted and exercised. They are reported in volume 1 of the American State Papers (p. 125), and also in the Journal of the House for that session. (*See* proceedings of December 28, 1795, p. 389.)

Briefly stated, it appears that information was given to the House by Messrs. Smith, of South Carolina; Murray, of Maryland; and Giles, of Virginia, that one Robert Randall had made or communicated to them, respectively, certain overtures to obtain their several support to a memorial intended to be presented by the said Randall on behalf of himself and others for the grant of a tract of land containing eighteen or twenty millions of acres, bordering on lakes Erie, Michigan, and Huron, and lying within the limits of the United States, for which support the said members, respectively, were promised to receive of the said Randall and his associates a consideration or emolument in lands or money.

The House regarding said information as sufficient evidence of a contempt to and a breach of its privileges, as an unwarrantable attempt to corrupt the integrity of its members, adopted a resolution directing the Speaker to issue his warrant, directed to the Sergeant-at-Arms, commanding him to take into custody, wherever to be found, the body of the said Robert Randall, and to keep the same in his custody subject to the further order and direction of the House. The said warrant was accordingly prepared, signed by the Speaker, *under his seal*, attested by the Clerk, and delivered to the Sergeant-at-Arms with orders to forthwith execute the same and make due return thereof to the House.

Information was also given by Mr. Buck, of Vermont, as to one Charles Whitney, whom he had good reason to believe was a partner and associate of the said Robert Randall and equally concerned in the business and overtures of said Randall, and similar action was taken by the House as to Whitney as in the case of Randall.

On the following day (Tuesday, December 29, 1795) the Sergeant-at-Arms made returns on the warrants issued to him that he had in his custody the bodies of the said Randall and Whitney, subject to the further order and direction of the House.

A Committee on Privileges, consisting of seven members, was thereupon appointed with instructions to report a mode of proceeding in the

cases of the said Robert Randall and Charles Whitney, which committee forthwith reported a resolution, which was adopted, providing that said Randall and Whitney be brought to the bar of the House and interrogated by the Speaker touching the information given against them on written interrogatories, which, with the answers thereto, were to be entered on the journal of the House; that every question proposed by a member be reduced to writing, and a motion made that the same be put by the Speaker, and that, after such interrogatories are answered, any further inquiry on the subject, if the House should deem it necessary, should be conducted by a committee of the House.

Mr. Randall was then brought to the bar of the House and answered that he was not prepared to admit or deny the charge against him, and asked that time be given him in which to make answer and offer a vindication of his conduct. He was allowed until the following day, and also notified "that he had informed a member of this House that a number of members of the House, not less than thirty, had engaged, or were engaged, to support his memorial or application."

On the following day the Speaker laid before the House an instrument of writing purporting to be "articles of agreement entered into and concluded at Detroit, September 26, 1795, for the purpose of obtaining the preemption right from the United States of America, and extinguishing the right of the native Indians to a certain territory therein defined, containing by computation eighteen or twenty millions of acres, and lying on Lakes Erie, Huron, and Michigan, between Ebenezer Allen and Charles Whitney, of Vermont, Robert Randall, of Philadelphia, on the one part, and John Askin, Jonathan Schieffelin, William Robertson, John Askin, jr., David Robertson, Robert Innes, and Richard Patterson, all of Detroit, of the other part," which instrument of writing had been given up by Charles Whitney to the Sergeant-at-Arms.

On the following day a report was made from the Committee on Privileges as to the proper mode of conducting the inquiry; among other things an order that the judge of the district of Pennsylvania be requested to attend the House for the purpose of administering an oath or affirmation to all witnesses, and that "on every debate the prisoners and their counsel shall withdraw," and that all questions should be put by the Speaker.

* * * * *

MONDAY, *January 4, 1796.*

Pursuant to the proceedings of the House on Friday last, Mr. Smith, of South Carolina; Mr. Murray, of Maryland; Mr. Giles, of Virginia; and Mr. Buck, of Vermont, delivered in at the clerk's table their several informations, in writing, subscribed with their names, respectively, in the case of Robert Randall and Charles Whitney, the statement or "information" of Mr. Smith only being given in full for the reason that it fully stated the facts in the case and was corroborated by the statements or "informations" of the other members named. The statement of Mr. Smith is as follows:

William Smith, one of the Representatives of the State of South Carolina in the Congress of the United States, declares that on Tuesday last, the 22d instant, a person who called himself Robert Randall, and who is said to be from the State of Maryland, applied to him at his lodgings, in the city of Philadelphia, and requested a private and confidential conversation of an hour, which the informant agreed to; and at the time appointed, which was the same evening, the said Randall

being alone with the informant, communicated to him a proposal for procuring from the Legislature of the United States a grant of about eighteen or twenty millions of acres in the Northwestern Territory, between lakes Michigan, Huron, and Erie; that the said Randall observed that the grant he proposed would be of great service to the United States, from the persons who would be interested therein (to wit, certain Canada merchants at or near Detroit, whose names he did not mention) having great influence over the Indians, who were not pacified by the late treaty concluded with Gen. Wayne; and that the said persons would extinguish the Indian claims at their own expense; and after setting forth the saving of expense, by the cessation of the Indian war, and other reasons to induce a belief that the proposed grant would be of public utility, he proceeded to inform the informant that the intention was to divide the land into about forty shares, twenty-four of which would be allowed to, or distributed among, such persons (meaning, as this informant understood him, from the whole purport of his conversation, members of Congress) as would favor the measure; that of these twenty-four shares he had the management or distribution of twelve, for the Southern part (meaning, as the informant understood, the Southern members of Congress); and another person, whose name he did not mention, had the disposition of the other twelve, for the Eastern part (still, as the informant understood and believes, meaning as aforesaid); that he, the said Randall, proposed subdividing the said shares into so many portions as to have a sufficiency to obtain a majority (meaning, as the informant understood him, a majority of Congress); and that gentlemen, after the session was over, or when they returned to private life, might then have such parts of shares, as the said twenty-four shares would be reserved for such of them as would favor the business, on the same terms as the original associators; that the view of him, the said Randall, and of those concerned with him, was to present a memorial, on the following Monday, to Congress, to obtain the said grant for a small price, mentioning half a million of dollars; and that he supposed the land was worth more than two shillings an acre. On taking leave he pressed the informant for an early and decisive answer to the foregoing proposals; to which the informant replied that he would not wish to see him again before Friday morning, and requested him to call on him at Congress, and not at his lodgings; but the House did not sit on Friday, and the informant has not seen him since. The informant further says that the foregoing is the substance and purport of the communication to him made by the said Randall, on the subject above set forth; and that the impression clearly made on the mind of the informant by the overtures was that, under a pretext of public utility, the object of the application was to secure the informant's influence as a member of Congress, by a temptation of great personal advantage; that the informant, the next morning, communicated the substance of the foregoing to Mr. Murray, one of the members from Maryland, and consulted him on the most proper mode of proceeding on so delicate an occasion; that Mr. Murray advised a consultation with Mr. Henry, of the Senate; and that, in consequence of such consultation with Mr. Murray and Mr. Henry, on the following day (Thursday), it was resolved that the informant should immediately communicate the whole transaction to the President of the United States, which he accordingly did.

WILLIAM SMITH.

DECEMBER 28, 1795.

On Monday, January 4, the House resumed the consideration of the case, which was continued on Tuesday, when the statements of Gabriel Christie, of Maryland, and Theodore Sedgwick, of Massachusetts, were submitted, and the House decided to proceed on the following day to a final decision of the case. On Wednesday, January 6, the House resumed consideration of the said case, and the following preamble and resolution were submitted, viz:

Whereas any attempt to influence the conduct of this House, or its members, on subjects appertaining to their legislative functions, by motives other than the public advantage, is a high contempt to this House, and a breach of its privileges; and whereas it does appear to this House, by the information, on oath, of sundry members, and by the proceedings thereon had before the House, that Robert Randall did attempt to influence the conduct of the said members, in a matter relating to their legislative functions, to wit, the sale of a large portion of the public property, by motives of private emolument to the said members, other than, and distinct from, the public advantage: Therefore,

Resolved, That the said Robert Randall has thereby committed a high contempt of this House and a breach of its privileges.

The previous question was then called for by five members, and the House refused to order the main question.

The following resolution was then submitted, viz:

Resolved, That it appears to this House that Robert Randall has been guilty of a contempt to, and a breach of the privileges of, this House by attempting to corrupt the integrity of its members in the matter laid to his charge.

The yeas and nays were then taken and the said resolution was adopted by yeas 78 to nays 17.

In pursuance of an order of the House the said Robert Randall was then brought to the bar of the House and reprimanded by the Speaker (Dayton), and remanded to the custody of the Sergeant-at-Arms.

On the following day Whitney was discharged from the custody of the Sergeant-at-Arms, and on January 13 Randall was also discharged from custody on the payment of fees.

No further action was taken in respect to either Randall or Whitney.
(See American State papers, Miss. vol. 1, p. 127.)

DEFAMING THE SENATE—CONTEMPT—LIBEL.

UNITED STATES SENATE, SIXTH CONGRESS, FIRST SESSION, DANIEL D. TOMPKINS, OF
NEW YORK, VICE-PRESIDENT.

CASE OF WILLIAM DUANE.

The case of William Duane was the first arising in either House of Congress in which false, scandalous, and defamatory publications in newspapers regarding either body was taken cognizance of. Duane, though born in this country, was educated in Ireland, where he became editor of *The World*, in Dublin. Having a dispute with the English Government, he was seized, sent to England, and his property confiscated. He subsequently established in London *The General Advertiser*, which he transferred to New York, and thence to Philadelphia, when the seat of government was changed to that city. Upon the demise of Frenau's *Gazette* he succeeded Bache in control of the *Aurora*, and his paper became the organ of the anti-administration party. Duane, in 1795, attacked President Washington with great bitterness and virulence, charging him with "political hypocrisy and kingly demeanor." A writer in the *Aurora* in 1795 (asserted to be Edmund Randolph), over the *nom de plume* of "A Calm Observer," charged Washington with being a "public defaulter," which absurd charge was promptly confuted, first by Wolcott and then by Hamilton. Referring to the period of Washington's second term and Mr. Adams's administration, Schouler says: "Nor need we deny that the American press of that day had become in a great degree coarse, virulent, and even indecent in the conduct of party discussions, nor that public men were therein traduced and exposed to constant ribaldry, nor that foreign renegades of dissolute habits were employed as writers in some of them."

The "foreign renegade" referred to, says Schouler (vol. 1, p. 367), was William Cobbett, an attorney's copying clerk in London, and afterwards a sergeant-major in the British army, who styled himself "Peter Porcupine," and established a paper called *Porcupine's Gazette*, in which he bitterly attacked the President and Senate on account of the British treaty, as well as D'Yrujo, the Spanish minister, who brought the matter to the attention of the President. The Attorney-General, under instructions, laid the matter before the grand jury of the Federal circuit court, and Cobbett was bound over. Judge McKean, chief justice of Pennsylvania, issued a warrant, which charged Cobbett with having published certain infamous libels on the King of Spain and his minister and the Spanish nation, "tending to alienate their affections and regard from the Government and citizens of the United States, and to excite them to hatred, hostilities, and war." When the

grand jury assembled soon after, Judge McKean delivered an able and exhaustive charge upon the law of libel, with express reference to Cobbett's publications. But such was the political diversity of the times that no indictment was found against Cobbett, either in the State or Federal court. (*See* 5 Hildreth, 164-173.)

The foregoing statement of the situation of affairs is deemed proper in order to a proper understanding of the reasons which compelled the Senate to take notice of the libelous publications of Duane.

An extended debate on the resolution submitted by Mr. Tracy took place on March 5, 1800, in which Messrs. Cocke, of Tennessee; Pinckney, of South Carolina; Tracy, of Connecticut; Paine, of Vermont; Mason, of Virginia; Anderson, of Tennessee; Reed, of South Carolina; Dayton, of New Jersey; Nicholas, of Virginia; and Marshall, of Kentucky, participated, which will be found on pages 68 to 96, inclusive.

The questions involved were stated by Mr. Pinckney to be—

- (1) What are the privileges of Congress?
- (2) How far are they defined by the Constitution? and
- (3) What is the liberty of the press as it respects those privileges?

Mr. Pinckney made an able and exhaustive argument in opposition to the resolution and Mr. Tracy the leading speech in reply.

The following extracts from the Journal of the Senate of that session give fully and officially the proceedings had in the case, to which is added the legal steps taken and a letter from the clerk of the U. S. circuit court for the eastern district of Pennsylvania, giving the record of final action taken, which is not shown by the State or Federal law reports:

WEDNESDAY, FEBRUARY 26, 1800.

* * * * *

A motion was made by Mr. Uriah Tracy, of Connecticut, that it be—

Resolved, That the Committee of Privileges be, and they are hereby, directed to inquire who is the editor of the newspaper printed in the city of Philadelphia called the General Advertiser, or Aurora, and by what means the editor became possessed of the copy of a bill prescribing the mode of deciding disputed elections of President and Vice-President of the United States, which was printed in the aforesaid newspaper, published Wednesday morning, the 19th instant, February, and by what authority he published the same; and by what authority the editor published in the same paper that the Hon. Mr. Pinckney, a Senator from South Carolina and a member of the committee who brought before the Senate the bill aforesaid, had never been consulted on the subject; and generally to inquire the origin of sundry assertions in the same paper respecting the Senate of the United States and members thereof in their official capacity and why the same were published; and make report to the Senate; and that the said committee have power to send for persons, papers, and records relating to the subject committed to them.

Ordered, That this motion lie for consideration.

THURSDAY, MARCH 6, 1800.

* * * * *

The Senate resumed the consideration of the motion made on the 26th of February last, that an inquiry be made relative to a publication in a newspaper called the Aurora, on the 19th of the said month.

On motion to amend the original motion, by prefacing it with these words:

Whereas the Constitution of the United States has expressly declared "That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people;"

And whereas to prevent any attempt being made on the part of either branch of Congress to define their own privileges, and exercise the same as occasion or cir-

cumstances may, in their opinion, require, and to remove all doubt as to the extent and exercise of the privileges they are to enjoy, the Constitution has positively and expressly limited and defined the same by declaring that each House shall be the judge of the elections, returns, and qualifications of its own members; that they may compel the attendance of absent members in such manner and under such penalties as each House may provide; that they may determine the rules of their proceedings, punish the members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; that the members of both Houses shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same; and for any debate or speech in either House shall not be questioned in any other place;

A motion was made to strike out from the amendment the second paragraph, to wit, all that follows the word "people;" and it passed in the affirmative—yeas, 21; nays, 8.

* * * * *

And, on request, Mr. Pinckney had leave to withdraw the preceding part of the proposed amendment.

And, the original motion being amended, a motion was made to strike out all the words thereof after the words "Resolved, That," line 1, and to insert in lieu thereof the following words:

As the Constitution of the United States does not vest in either branch of Congress any other powers on the subject of privilege than those mentioned and limited and defined therein, therefore, to assume any other privilege would be to diminish the rights of the people expressly reserved to them by the Constitution; to encroach on the powers given to the judicial; to disparage the right of trial by jury; and to establish the dangerous doctrine that a single branch, without control or interference, can at their own will and in their own case punish for reasons on which the Constitution has given them no power to decide.

And after debate the Senate adjourned to 11 o'clock to-morrow morning.

FRIDAY, MARCH 7, 1800.

* * * * *

The Senate took into consideration the motion made yesterday for amending the motion made on the 26th of February last, that an inquiry be had relative to a publication of the 19th of said month in a newspaper called the Aurora; and

A motion was made to strike out these words: "Other powers on the subject of privilege than those mentioned, and limited, and defined therein; therefore, to assume any other privilege would be to diminish the rights of the people expressly reserved to them by the Constitution," and to insert the word "power" before the words "to encroach;"

And, after debate, the Senate adjourned to 11 o'clock to-morrow morning.

SATURDAY, MARCH 8, 1800.

* * * * *

The Senate resumed the consideration of the motion made yesterday to strike out certain words from the motion of the preceding day, on the original motion made on the 26th of February last, that an inquiry be had relative to a publication of the 19th of the said month, in a newspaper called the Aurora;

And on the question to strike out and to insert the word "power," as stated yesterday, it passed in the affirmative—yeas, 19; nays, 8.

* * * * *

And, on motion to strike out the original motion, for the purpose of inserting the amendment as amended, it passed in the negative—yeas, 8; nays, 19.

* * * * *

A motion was made to strike out, after the words "Resolved, That," line 1 of the original motion, and insert in lieu thereof "it being an instruction to the Committee of Privileges to inquire and report whether, in their opinion, the publication of the 19th of February, contained in the newspaper called the General Advertiser, or Aurora, is a seditious libel against the Senate of the United States; and, if so, whether the Attorney-General should be requested to prosecute the editor thereof for the printing and publishing the same."

And it was agreed to divide the motion, and that the question be taken on striking out, and which passed in the negative—yeas, 8; nays, 19.

And, on motion to agree to the original motion as amended, it passed in the affirmative—yeas, 19; nays, 8.

So it was

Resolved, That the Committee of Privileges be, and they are hereby, directed to consider and report what measures it will be proper for the Senate to adopt in relation to a publication in the newspaper printed in the city of Philadelphia on Wednesday morning, the 19th of February, 1800, called the General Advertiser, or Aurora, in which it is asserted that the bill prescribing the mode of deciding disputed elections of President and Vice-President of the United States had passed the Senate, when, in fact, it had not passed; in which it is also asserted that the Hon. Mr. Pinckney, a Senator from the State of South Carolina, and a member of the committee, who brought before the Senate the bill aforesaid, had never been consulted on the subject, whereas, in fact, he was present at each meeting of the committee; and generally to report what measures ought to be adopted in relation to sundry expressions contained in said paper respecting the Senate of the United States, and the members thereof, in their official capacity.

FRIDAY, MARCH 14, 1800.

Mr. Dayton, from the Committee of Privileges, to whom it was referred on the 8th instant, to consider and report what measures will be proper to adopt in relation to a publication in the newspaper printed in the city of Philadelphia on Wednesday morning, the 19th of February last, called the General Advertiser, or Aurora, made report; which was read.

Ordered, That it lie on the table.

TUESDAY, MARCH 18, 1800.

The Senate took into consideration the report of the Committee of Privileges on the measures that it will be necessary to adopt in relation to a publication in the newspaper, printed in the city of Philadelphia, on Wednesday morning, the 19th of February last, called the General Advertiser, or Aurora; and,

On motion to adopt the first resolution reported, it was agreed to divide the motion, and that the question should be taken on the following words:

Resolved, That the said publication contains assertions and pretended information respecting the Senate and the committee of the Senate and their proceedings which are false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States.

And on the question to adopt this part of the resolution, reported by the committee, it passed in the affirmative—yeas, 20; nays, 8.

WEDNESDAY, MARCH 19, 1800.

* * * * *

The Senate resumed the consideration of the report of the Committee of Privileges, on the measures proper to adopt in relation to a publication in the newspaper called the Aurora, of the 19th of February last; and it was agreed to amend the second member of the first resolution reported, as follows: “and that said publication is a high breach of the privileges of this House;” and,

On the question to agree thereto, as amended, it was determined in the affirmative—yeas, 17; nays, 11.

THURSDAY, MARCH 20, 1800.

* * * * *

The Senate resumed the consideration of the report of the Committee of Privileges, on the measures proper to be adopted in relation to a publication or the 19th of February last, in the newspaper called the Aurora; and it was agreed to fill the blanks in the second resolution reported, with the words “Monday, 24th, twelve o’clock;” and, at the close of the resolution, with the words “twenty-second;” and,

On motion, to adopt this part of the report, as follows :

Resolved, That William Duane, now residing in the city of Philadelphia, the editor of the said newspaper called the General Advertiser, or Aurora, be, and he is hereby, ordered to attend the bar of this House on Monday, the 24th day of March inst., at 12 o’clock, at which time he will have opportunity to make any proper defense for his conduct in publishing the aforesaid false, defamatory, scandalous, and malicious assertions, and pretended information; and the Senate will then proceed to take further order on the subject; and a copy of this and the foregoing resolution, under the authentication of the Secretary of the Senate of the United States, and attested as a true copy by James Mathers, Sergeant-at-Arms for the said Senate, and left by the said Sergeant-at-Arms with the said William Duane, or at the office of the Aurora, on or before the 22d day of March inst. shall be deemed sufficient notice for the said Duane to attend in obedience to this resolution.

It passed in the affirmative—yeas, 18; nays, 10.

* * * * *

So the report of the committee was adopted, as follows:

Whereas on the 19th of February, now last past, the Senate of the United States being in session in the city of Philadelphia, the following publication was made in the newspaper, printed in the said city of Philadelphia, called the General Advertiser, or Aurora, viz:

“In our paper of the 27th ultimo we noticed the introduction of a measure into the Senate of the United States, by Mr. Ross, calculated to influence and affect the approaching Presidential election, and to frustrate, in a particular manner, the wishes and interests of the people of the Commonwealth of Pennsylvania.

“We this day lay before the public a copy of that bill as it has passed the Senate.

“Some curious facts are connected with this measure, and the people of the Union at large are intermediately, and the people of this State immediately, interested to consider the movements, the mode of operation, and the effects.

“We noticed a few days ago the caucuses (or secret consultations) held in the Senate Chamber. An attempt was made in an evening paper to give a counteraction (for these people are admirable at the system of intrigue) to the development of the Aurora, and to call those meetings jacobinical; we must cordially assent to the jacobinism of those meetings—they were in the perfect spirit of a jacobinical conclave.

“The plain facts we stated are, however, unquestionable; but we have additional information to give on the subject of those meetings. We stated that intrigues for the Presidential election were among the objects. We now state it as a fact that can not be disputed upon fair ground, that the bill we this day present was discussed in the caucus on Wednesday evening last.

“It is worthy of remark how this bill grew into existence.

"The opponents of independence and republican government who supported Mr. Ross in the contest against Mr. M'Kean are well known by the indecency, the slander, and the falshood of the measures they pursued—and it is well known they are all devoted to the Federal party, which we dissected on Monday. Mr. Ross proposed this bill in the Federal Senate (how consistently with the decency of his friends will be seen), a committee of five was appointed to prepare a bill on the subject; on this committee Mr. Pinckney, of South Carolina, was appointed. On Thursday morning last (the caucus held the preceding evening) Mr. Ross informed Mr. Pinckney that the committee had drawn up a bill on the subject, when in fact Mr. Pinckney had never been consulted on the subject, though a member of the committee. The bill was introduced and passed as below.

"On this occasion it may not be impertinent to introduce an anecdote which will illustrate the nature of the caucuses, and show that our popular Government may, in the hands of a faction, be as completely abused as the French constitution has been, by the self-created consuls:

"In the summer session of 1798, when federal thunder and violence were belched from the pestiferous lungs of more than one despotic minion, a caucus was held at the house of Mr. Bingham, in this city. It was composed of members of the Senate, and there were present seventeen members. The Senate consisting of thirty-two members, this number was of course a majority, and the session was a full one.

"Prior to deliberation on the measures of war, navy, army, democratic proscription, etc., it was proposed, and agreed to, that all the members present should solemnly pledge themselves to act firmly upon the measures to be agreed to by the majority of the persons present at the caucus.

"The measures were perfectly in the high tone of that extraordinary session. But upon a division of the caucus it was found that they were divided nine against eight. This majority, however, held the minority to their engagement, and the whole seventeen voted in the Senate upon all the measures discussed at the caucus.

"Thus it is seen that a secret self-appointed meeting of seventeen persons dictated laws to the United States, and not only that nine of that seventeen had the full command and power over the consciences and votes of the other eight, but that nine possessed, by the turpitude of the eight, actually all the power which the Constitution declares shall be vested in the majority only. In other words, a minority of nine members of the Senate ruled the other twenty-three members.

"It is easily conceivable, as in the recent changes in France, that the spirit of caucusing may be conducted in progression down to two or three persons; thus three leading characters may agree to act upon measures approved by any two of them, these three may add two others, and they would be a majority of five; and those adding four others would be a majority of nine; and this nine possess all the power of a majority of twenty-three.

"Yet such is the way we are treated—by those who call themselves Federalists.

"The following bill is an offspring of this spirit of faction secretly working, and it will be found to be in perfect accord with the outrageous proceedings of the same party in our State legislature who are bent on depriving this State of its share in an election that may involve the fate of the country and posterity."

Resolved, That the said publication contains assertions and pretended information respecting the Senate and the Committee of the Senate, and their proceedings, which are false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and that the said publication is a high breach of the privileges of this House.

Resolved, That William Duane, now residing in the city of Philadelphia, the editor of the said newspaper called the General Advertiser, or Aurora, be, and he is hereby, ordered to attend at the bar of this House, on Monday, the 24th of March, instant, at 12 o'clock, at which time he will have opportunity to make any proper defense for his conduct in publishing the aforesaid false, defamatory, scandalous, and malicious assertions and pretended information; and the Senate will then proceed to take further order on the subject; and a copy of this and the foregoing resolution, under the authentication of the Secretary of the Senate of the United States, and attested as a true copy by James Mather, Sergeant-at-Arms for the said Senate, and left by the said Sergeant-at-Arms with the said William Duane, or at the office of the Aurora, on or before the 22d day of March, instant, shall be deemed sufficient notice for the said Duane to attend in obedience to this resolution.

SATURDAY, MARCH 22, 1800.

Mr. Dayton, from the Committee of Privileges, to whom it was referred to prepare and lay before the Senate a form of proceedings in the case of William Duane, reported in part; which report was read, amended, and agreed to, as follows:

When William Duane shall present himself at the bar of the House, in obedience to the order of the 20th instant, the President of the Senate is to address him as follows:

First. William Duane:

You stand charged by the Senate of the United States, as editor of the newspaper called the General Advertiser, or Aurora, of having published in the same, on the 19th of February now last past, false, scandalous, defamatory and malicious assertions and pretended information respecting the Senate and the Committee of the Senate and their proceedings, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States, and therein to have been guilty of a high breach of the privileges of this House.

Then the Secretary shall read the resolutions of the Senate, passed the 20th instant, and with the preamble; after which the President is to proceed as follows, viz:

First. Have you anything to say in excuse or extenuation for said publication?

Secondly. If he shall make no answer the Sergeant-at-Arms shall take him into custody, and retiring with him from the Senate Chamber until the Senate shall be ready for a decision, at which time the Sergeant-at-Arms shall again set him at the bar of the House and the President of the Senate is to pronounce to him the decision.

Thirdly. If he shall answer, he is to continue at the bar of the House until the testimony (if any be adduced) shall be closed and then he shall retire while the Senate are deliberating on the case; and when a decision is agreed upon, the said Duane, being notified of the time by the Sergeant-at-Arms verbally, or by a written notice left at his office, shall appear at the bar of the House, and the President of the Senate is to pronounce to him the decision.

MONDAY, MARCH 24, 1800.

The Vice-President communicated a letter, signed William Duane, requesting to be heard by counsel, and have process awarded to compel the attendance of witnesses in his behalf, on the summons served on him the 22d instant for a high breach of the privileges of the Senate: which letter was read.

A motion was made that William Duane be permitted to be heard by counsel, agreeably to his request; and, after debate, the said William Duane appeared at the bar of the House, agreeably to the summons of the 22d instant; a return thereof having been made in the following words:

CITY OF PHILADELPHIA, *March 21, 1800.*

Then I, the subscriber, Sergeant-at-Arms for the Senate of the United States, left a true and attested copy of the within at the office of the Aurora.

JAMES MATHERS.

And the charge against the said William Duane having been read, he repeated his request to be heard by counsel.

On which he was ordered to withdraw, and a motion was made as follows:

Resolved, That William Duane be permitted to be heard by counsel, he having appeared, agreeably to the order of the Senate, and requested to be heard by counsel.

On which a motion was made to strike out all the motion subsequent to the word "Duane," and insert "having appeared at the bar of the Senate and requested to be heard by counsel on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offense." And, on motion, it was agreed to divide the motion, and that the question be taken on striking out; which passed in the affirmative—yeas, 18; nays, 11.

* * * * *

A motion was made to amend the amendment by striking out these words: "He be allowed the assistance of counsel while personally

attending the bar of the Senate; who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offense," and to insert "he be permitted to have assistance of counsel for his defense;" and,

On motion, it was agreed to divide the motion, and that the question should be taken on striking out; which passed in the negative—yeas, 10; nays, 18.

* * * * *

And, on the question to agree to the original amendment, it passed in the affirmative—yeas, 21; nays, 8.

* * * * *

And the question being taken on the motion as amended, it was

Resolved, That William Duane, having appeared at the bar of the Senate, and requested to be heard by counsel on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offense.

A motion was made that it be an instruction to the Committee of Privileges to report in what manner witnesses shall be compelled to attend the Senate in support of the charge against William Duane, and in his defense against that charge.

And, after debate, the further consideration thereof was postponed.

On motion,

Resolved, That a copy of the resolution last agreed to be sent to William Duane, and at the same time he be ordered to attend at the bar of this House at 12 o'clock on Wednesday next.

WEDNESDAY, MARCH 26, 1800.

The Vice-President communicated a letter signed William Duane, stating that he had received "an authenticated copy of the resolution of Monday last in his case," and inclosing certain papers stated to be a correspondence between him and his intended counsel, marked A, B, and C, and that he finds himself "deprived of all professional assistance under the restrictions which the Senate have thought fit to adopt. He therefore thinks himself bound, by the most sacred duties, to decline any further voluntary attendance upon that body, and to leave them to pursue such measures in this case as in their wisdom they may deem meet;" and the letter was read.

On motion that the papers referred to in the letter be read, it passed in the negative.

On motion, the Senate took into consideration the report of the Committee of Privileges, who were ordered to prepare and lay before the Senate a form of proceedings in the case of William Duane; and, after debate, the order of the day was called for; and, on motion,

Ordered, That the Sergeant-at-Arms, at the bar of the House, do call William Duane, and the said William Duane did not appear.

Whereupon, on motion,

Resolved, That as William Duane has not appeared at the bar of this House, in obedience to the order of the 24th instant, and has addressed a letter to the President of the Senate, which has been read this morning, in which he refuses any further attendance, his letter be referred to the Committee of Privileges, to consider and report thereon.

On motion, the Senate resumed the consideration of the report of the Committee of Privileges of the 25th instant.

And on the question to agree to the first resolution, amended as follows:

Resolved, That all testimony shall be taken by the Committee of Privileges, who are hereby authorized to send for persons, papers, and records, and compel the attendance of witnesses which may become requisite for the execution of their commission.

It passed in the affirmative—yeas, 18; nays 11.

THURSDAY, MARCH 27, 1800.

* * * * *

Mr. Dayton, from the Committee of Privileges, to whom was referred the letter of William Duane, on the 26th instant, made report as follows:

Resolved, That William Duane, editor of the General Advertiser, or Aurora, having neglected and refused to appear at the bar of this House at 12 o'clock on the 26th day of March, instant, pursuant to the order of the 24th instant, of which order he had been duly notified; and having sent the following letter to the President of the Senate, which has been communicated to the Senate, viz:

“To the President of the Senate:

“SIR: I beg of you to lay before the Senate this acknowledgment of my having received an authenticated copy of their resolutions on Monday last, in my case. Copies of those resolutions I transmitted to Messrs. Dallas and Cooper, my intended counsel, soliciting their professional aid; a copy of my letter inclosed, marked A. Their answers I have also the pleasure to inclose, marked B and C. I find myself, in consequence of these answers, deprived of all professional assistance, under the restrictions which the Senate have thought fit to adopt. I therefore think myself bound by the most sacred duties to decline any further voluntary attendance upon that body, and leave them to pursue such measures in this case as, in their wisdom, they may deem meet.

“I am, sir, with perfect respect,

“WM. DUANE,”

is guilty of a contempt of said order, and of this House, and that, for said contempt, he, the said William Duane, be taken into custody of the Sergeant-at-Arms attending this House, to be kept subject to the further orders of the Senate.

On motion to agree to this first resolution reported, it passed in the affirmative—yeas, 16; nays, 11.

* * * * *

On motion to strike out these words from the second resolution reported “and all marshals, deputy marshals, and civil officers of the United States, and every other person, are hereby required to be aiding and assisting to you in the execution thereof,” it passed in the negative—yeas, 10; nays, 19.

* * * * *

The second resolution reported was read, as follows:

Resolved, That a warrant issue signed by the President of the Senate, in the following form, viz:

UNITED STATES,

The 27th day of March, 1800, ss:

Whereas the Senate of the United States, on the 18th day of March, 1800, then being in session in the city of Philadelphia, did resolve that a publication in the General Advertiser or Aurora, a newspaper printed in the said city of Philadelphia, on Wednesday, the 19th of February, then last past, contained assertions and pretended information respecting the Senate, and committee of the Senate, and their proceedings which were false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and that the said publication was a high breach of the privileges of the House.

And whereas the Senate did then further resolve and order, that the said William Duane, resident in the said city, and editor of said newspaper, should appear at the bar of the House, on Monday, the 24th day of March, instant, that he might then have opportunity to make any proper defense for his conduct in publishing the aforesaid false, defamatory, scandalous, and malicious assertions and pretended information.

And whereas the said William Duane did appear on said day at the bar of the House, pursuant to said order, and requested counsel, and the Senate, by their resolution of the 24th day of March, instant,

Resolved, That William Duane, having appeared at the bar of the Senate and requested to be heard by counsel on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who might be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offense, and that the said William Duane should attend at the bar of the Senate on Wednesday, then next, at 12 o'clock, of which the said Duane had due notice."

And whereas said William Duane, in contempt of the said last-mentioned order, did neglect and refuse to appear at the bar of the Senate at the time specified therein, and the Senate of the United States, on the 27th day of March, instant, did thereupon resolve that the said William Duane was guilty of a contempt of said order of the Senate, and that for said contempt he, the said William, should be taken into custody of the Sergeant-at-Arms attending the Senate, to be kept for their further orders. All which appears by the journals of the Senate of the United States now in session in the said city of Philadelphia.

These are, therefore, to require you, James Mathers, Sergeant-at-Arms for the Senate of the United States, forthwith to take into your custody the body of the said William Duane, now resident in the said city of Philadelphia, and him safely to keep, subject to the further order of the Senate; and all marshals and deputy marshals and civil officers of the United States, and every other person, are hereby required to be aiding and assisting to you in the execution thereof, for which this shall be your sufficient warrant.

Given under my hand, this 27th day of March, 1800.

THOMAS JEFFERSON,
President of the Senate of the United States.

On motion to agree to this resolution, as reported, it passed in the affirmative—yeas 18, nays 11.

So the report of the committee was adopted.

WEDNESDAY, MAY 14, 1800.

* * * * *

On motion that it be

Resolved, That the President of the United States be requested to instruct the proper law officer to commence and carry on a prosecution against William Duane, editor of the newspaper called the Aurora, for certain false, defamatory, scandalous, and malicious publications in said newspaper, of the 19th of February last, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States.

It passed in the affirmative—Yeas 13, nays 4.

* * * * *

From Wallace's (John B.) "Reports of Cases in the Circuit Court of the United States for the Third Circuit" (then composed of the States of Delaware, New Jersey, and Pennsylvania) it appears that an indictment was found against Duane for libel on the Senate of the United States at the October term, 1800, and was continued on his affidavit that he was not prepared and had material witnesses who were absent, etc.

After argument by counsel for Duane and ex-District Attorney Ingersoll for the Government at the May session in 1801, the court delivered their opinions *seriatim*, that of Judge Griffith being in part as follows:

This indictment, found in October last against William Duane for a libel on the Senate of the United States, was then ready to be tried on the part of the public prosecutor. The defendant professed to be unprepared, and on his affidavit proving the allegation the trial was postponed in his favor until this term. The public prosecutor is now ready to proceed, and the defendant again asks that the prosecution may be suspended until October next. His counsel have insisted with much earnest-

ness upon some topics which are immaterial in law or unfounded in fact. His situation was represented as a hard one, owing to the obstacles in the way of procuring his evidence, such as the limited jurisdiction of the court not affording him compulsory process—the remoteness and dispersion of the witnesses, who, he alleges, will justify the truth of the libel—the improbability of his being able to bring the members of the Senate implicated in the libel into court to criminate themselves. As to all these representations, whether true or false, they furnish no grounds upon which this court, sitting to try crimes committed and found by a grand jury within their jurisdiction, can act. The editor of a paper who deliberately publishes to the world a charge which immediately affects the character of an individual, or brings the Government into hatred or contempt, should be prepared to prove an accusation voluntarily made, and, whilst subsisting, followed with private distresses or public calamity. He acts at his peril—he knows his authority. He knows, or should know, too, what aid he can have by law to procure his evidence; he can foresee the hardship (if there be one) of his not being able to get witnesses from other States, or authorized to compel men to furnish evidence against themselves. An offender would seldom be brought to trial if his swearing to the materiality of witnesses out of the reach of the court and showing some pains to procure their attendance were grounds for its postponement. Where witnesses are out of the jurisdiction of the court and there is no well-grounded expectation of procuring their testimony at another time a trial is not to be deferred; for it is a standing requisite in such cases, and must appear on oath, that the party has a reasonable expectation of procuring their testimony at the next court.

Chief Justice Tilghman concurred with Judge Griffith in allowing the motion for a continuance to the October term, the concluding portion of his opinion being as follows:

Much has been said relative to the hardship of drawing his justification from the lips of his prosecutors, the members of the Senate. I deliver no opinion, whether they can be compelled to give evidence on this indictment. But the defendant has no right to complain of this. If he will libel men without any other means of proving the matter than from themselves, he takes the risk on himself.

Judge Bassett opposed the motion for continuance.

As no further record of the case appeared in subsequent reports, letters were addressed to Hon. George W. Dallas, U. S. circuit judge for the eastern district of Pennsylvania, requesting information as to its final disposition, eliciting the following reply from the clerk of the court, viz:

CLERK'S OFFICE CIRCUIT COURT, U. S. E. D. OF PA.,
Ninth and Chestnut Streets, Philadelphia, July 23, 1894.

HENRY H. SMITH, ESQ.,

Clerk Special Committee, etc., U. S. Senate, Washington, D. C.:

DEAR SIR: I am in receipt this a. m. of your letters of 12th and 16th instant addressed to Hon. George M. Dallas, U. S. circuit judge. Upon examination of the record in the case of *United States v. William Duane*, May term, 1801, U. S. circuit court, I do not find any proceedings were had in the case beyond those given in Wallace's Reports.

The last entry I find is that of May 23, 1801, as follows: "The defendant does not demand interrogatories to be administered and submits to the court. The court adjudges that the defendant be imprisoned for thirty days, including this day; that he pay the costs of prosecution, and stand committed till this sentence is complied with."

Very respectfully, yours,

SAMUEL BELL, *Clerk, etc.*

Mr. Jefferson, in his *Manual* (see Senate edition, 1892, p. 194), in discussing the case of William Duane, editor of the *Aurora*, said:

The editor of the *Aurora*, having in his paper of February 19, 1800, inserted some paragraphs defamatory to the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order it was insisted in support of it that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are

given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State legislatures exercise the same power, and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. To this it was answered that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State legislatures have equal authority because their powers are plenary; they represent their constituents completely and possess all their powers, except such as their constituents have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them, directly, exemption from personal arrest, exemption from question elsewhere for what is said in their House, and power over their own members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them" they may provide by law for an undisturbed exercise of their functions, e. g., for the punishment of contempts, of affrays or tumult in their presence, etc.; but till the law be made, it does not exist; and does not exist, from their own neglect; that, in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies *ad libitum* to aid him (3 Grey, 59, 147, 255), is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and, after the fact committed, make its sentence both the law and the judgment on that fact; if the offense is to be kept undefined, and to be declared only *ex re nata*, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed. Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment, which is to make and at the same time apply the law, is open to question and consideration, as are all new laws. Perhaps Congress, in the meantime, in their care for the safety of the citizen, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

EXPULSION—POWER OF THE SENATE AS TO—AARON BURR'S CONSPIRACY.

TENTH CONGRESS, FIRST SESSION, GEORGE CLINTON, OF NEW YORK, VICE-PRESIDENT.

CASE OF JOHN SMITH, OF OHIO.

The essential facts of this important case are given, including the report in full of the special committee appointed, for the reason that the power or jurisdiction of the Senate to proceed against Mr. Smith as proposed was questioned, and for the additional reason that the report and debates, so far as the latter were published, furnish valuable information as to the construction of certain portions of the Constitution by those who assisted in framing it.

The question as to whether the Senate was bound to follow the principles of a court of law, or whether its proceedings should be regulated and governed by its own judgment and discretion as occasion required, was fully discussed, and, as in the case of William Blount (referred to in the report), a Senator from the State of Tennessee, who, on July 8, 1797 (first session Fifth Congress), was declared "guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator," and by a vote of 25 to 1 was "expelled from the Senate of the United States," it was decided that the Senate had jurisdiction of the offense and was not bound by, or restricted to, the rules of evidence of a court of law.

Several interesting questions of practice or proceeding arose, the decisions as to which are of importance. An abstract of the proceedings following the presentation of the report is given, with references to pages where debate appears. A motion to postpone the case until the first Monday in April (1808) was lost by the casting vote of Vice-President Clinton, and the motion of Mr. James A. Bayard, of Delaware, to postpone the case until April 1 prevailed, by yeas 17, nays 15. On that and the following day the counsel for Mr. Smith read numerous depositions, and a resolution was adopted directing that a message be sent to the House of Representatives requesting that Messrs. Sturges, Davenport, and Morrow, members of the House, be permitted to attend the Senate as witnesses in the pending case.

On Friday, April 5, Mr. Key, of counsel for Mr. Smith, addressed the Senate (pp. 187 to 207), and was followed by his associate, Mr. Harper (pp. 208 to 234), on the following day.

On Friday, April 8, Mr. Adams addressed the Senate (pp. 237 to 265) in reply. He was followed by Mr. Hillhouse, of Connecticut, on April 9 (pp. 266 to 279); by Mr. William B. Giles, of Virginia (pp. 279 to 301); by Mr. Anderson, of Tennessee (pp. 301 to 308); by Mr. Pope, of Kentucky

(pp. 308 to 313); by Mr. William H. Crawford, of Georgia, (pp. 313 to 321), and by Mr. Giles (pp. 321 to 324) in closing, when the vote was taken on the resolution of expulsion, resulting in the negative by yeas 19, nays 10, two-thirds not voting in favor thereof, as required by the Constitution.

Mr. Smith did not formally tender his resignation to the Senate, but addressed a letter to the governor of Ohio, advising that official of his determination to resign his seat in the Senate, and stating at length his reasons therefor. (*See footnote, p. 324 of Annals.*)

FRIDAY, NOVEMBER 27, 1807.

* * * * *

Mr. Maclay offered the following resolution:

Resolved, That a committee be appointed to inquire and report to the Senate their opinion whether John Smith, a Senator from the State of Ohio, ought not to be expelled from the Senate in consequence of the part which he took in the conspiracy of Aaron Burr against the peace and prosperity of the United States, or what other steps, in their opinion, it may be necessary and proper under the present circumstances for the Senate to adopt.

Mr. Pope moved to amend this resolution; to make way for which amendment Mr. Maclay withdrew his resolution.

Mr. Thurston offered the following resolution as an amendment, omitting that part in italics, which Mr. Jones moved as an amendment to the amendment:

Resolved, That a committee be appointed to inquire whether it be compatible with the honor and privileges of this House that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein; and that the committee do inquire into *all the facts regarding the conduct of Mr. Smith, as an alleged associate of Aaron Burr*, and report the same to the Senate.

Mr. Hillhouse objected to the resolution on the ground of allowing the committee too wide a latitude.

Mr. Adams vindicated the resolution from this objection.

Mr. Pope moved an adjournment, to allow further time for reflecting on the most correct course to be pursued.

Mr. Thurston advocated the powers given by the resolution to the committee; and, in reply to some observations previously made, remarked that a very different species of testimony from that required by a court of law would constitute sufficient ground for the Senate to act on in a case where the effect might be the expulsion of a member.

The motion to adjourn was lost, only four members rising in favor of it.

Mr. Hillhouse replied to the observations of Mr. Thurston on the score of testimony. He viewed those observations as extremely dangerous. Should they be carried into effect, the character of a man, however innocent, might be blasted. He thought the case called for great circumspection. He wished the inquiry to be made, and had prepared a resolution, which he read, as follows, as expressive of his opinion of the most proper course:

Resolved, That the message of the President of the United States, of November 2, 1807, together with the documents which accompanied the same, be referred to a committee to inquire how far John Smith, a member of this Senate, had been connected with or concerned in the transactions therein referred to, and to report whether any and what proceedings ought to be had by this Senate in relation to said John Smith, and to send for persons, papers, and records.

Mr. Tiffin rose, merely to state that he had seen attested copies of record in the case of Mr. Smith, and to communicate to the Senate the

contents of a letter which he had just received from him. The letter is as follows:

WASHINGTON, *November 27, 1807.*

DEAR SIR: Just having heard that a motion is pending in the Senate to appoint a committee to inquire into certain charges exhibited against me at Richmond, by the late grand jury, I beg you, sir, to assure the Senate, in my name, that nothing will afford me more pleasure than to have a public investigation of the said charges and an opportunity to vindicate my innocence; and I beg you, from your seat, to make this statement.

I am, dear sir, respectfully yours, etc.,

JOHN SMITH.

Hon. Mr. TIFFIN.

Mr. S. Smith said, that, however unpleasant it might be, it was the duty of the Senate to meet the proposed inquiry. It did not follow that such an investigation would go to criminate Mr. Smith. It might, on the contrary, issue in his exculpation. He understood that that gentleman had expressed his conviction that a full investigation would completely exculpate him from the charges which had been preferred against him. Be this as it might, Mr. S. thought there were circumstances which had been disclosed at Richmond which called upon the Senate to go into the inquiry.

He alluded to the testimony of Blennerhasset's gardener and Lieut. Jackson. He had, however, heard that Mr. Smith thought it in his power to do away the charges flowing from these statements. Why an opportunity to do this should be refused he could not understand. He added that he perceived no objection to an examination of two of the members of the grand jury who held seats in the other House, with regard to the grounds on which the bills of indictment had been found; from which examination it would appear whether there was any necessity for sending for other testimony. These considerations would induce him to vote for the resolution; at the same time that he was little solicitous as to the particular resolution which should be adopted.

Mr. Mitchell stated that Mr. Smith had expressed to him his regret at not having been tried at Richmond on both the charges preferred against him, as he was confident that he could have established his innocence. What was the object of the resolution? To give him this opportunity—to allow him the only resource that remained; to allow him to be tried here by his peers. Therefore, so far as it related to the character of Mr. Smith, or to the dignity of the Senate, the inquiry seemed a proper one, and he should consequently vote for the resolution.

Mr. Thurston said he felt some delicacy in having hazarded an opinion on the subject of testimony which seemed in some respects to militate against the provisions of the Constitution. What he had uttered on this point had been the result of momentary impressions, and might possibly, on further reflection, be considered, even by himself, as erroneous. He should be sorry that, on a point of so much importance, anything which had thus hastily fallen from him should go abroad which might be erroneous. But as the remark had dropped from him he would briefly state the grounds on which he had made it, which he still felt to be satisfactory. He was still of opinion that the Senate, in such a case, were not bound by the technical rules of law, as rigidly observed in courts. Various considerations compelled them to pay particular regard to their character and convenience. Hence the Constitution had conferred upon them an unlimited power to expel a member. In such a case they were constituted both accusers and judges, in direct violation of the common principles of law. A member might be expelled for acts which would not render him amenable to a court of justice. He was

therefore of opinion that in this case the Senate might decide upon what appeared to them credible testimony, although it should not be of such character as would be admitted in a court of law.

The question was then taken on the resolution offered by Mr. Thurston and amended by Mr. Jones, and carried without a division.

The following named Senators were appointed as the committee: John Quincy Adams, of Massachusetts; Samuel Maclay, of Pennsylvania; Jesse Franklin, of North Carolina; Samuel Smith, of Maryland; John Pope and Buckner Thurston, of Kentucky, and Joseph Anderson, of Tennessee.

* * * * *

FRIDAY, DECEMBER 4, 1807.

Mr. Adams stated that he was instructed by the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, to submit the following resolution, which was read and agreed to:

Resolved, That the committee appointed to inquire into the conduct of John Smith, a Senator from the State of Ohio, be authorized to admit the attendance of Mr. Smith.

* * * * *

THURSDAY, DECEMBER 31, 1807.

Mr. Adams, from said committee, stated that it was ready to report, and moved that John Smith, a Senator from the State of Ohio, be notified by the Vice-President to attend in his place, which motion was agreed to. The Vice-President thereupon notified Mr. Smith in the words following:

SIR: You are hereby required to attend the Senate in your place without delay.
By order of the Senate.

GEO. CLINTON,
President of the Senate.

Mr. Smith thereupon attended, when Mr. Adams, from said committee, made the following report, viz:

CASE OF JOHN SMITH.

Mr. Adams stated that the committee appointed on the 27th November last, "to inquire whether it be compatible with the honor and privileges of this House that John Smith, a Senator from the State of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond in August last, for treason and misdemeanor, should be permitted any longer to have a seat therein," were ready to report; and he made the following motion, which was read and agreed to:

Ordered, That John Smith, a Senator from the State of Ohio, be notified by the Vice-President to attend in his place.

The Vice-President accordingly notified Mr. Smith in the words following:

SIR: You are hereby required to attend the Senate in your place without delay.

By order of the Senate.

GEO. CLINTON,
President of the Senate.

JOHN SMITH, Esq.,
Senator from the State of Ohio.

And Mr. Smith attended.

Whereupon, Mr. Adams made a report from the committee last mentioned; and the report was read, and 300 copies thereof were ordered to be printed for the use of the Senate.

The report is as follows:

Your committee are of opinion that the conspiracy of Aaron Burr and his associates, against the peace, union, and liberties of these States, is of such a character, and that its existence is established by such a mass of concurring and mutually corroborative testimony, that it is incompatible not only with the honor and privileges of this House, but with the deepest interests of this nation, that any person engaged in it should be permitted to hold a seat in the Senate of the United States.

Whether the facts, of which the committee submit herewith such evidence as, under the order of the Senate, they have been able to collect, are sufficient to substantiate the participation of Mr. Smith in that conspiracy, or not, will remain for the Senate to decide.

The committee submit also, to the consideration of the Senate, the correspondence between Mr. Smith and them, through their chairman, in the course of their meetings. The committee have never conceived themselves invested with authority to try Mr. Smith. Their charge was to report an opinion relating to the honor and privileges of the Senate, and the facts relating to the conduct of Mr. Smith. Their opinion, indeed, can not be expressed in relation to the privilege of the Senate, without relating, at the same time, to Mr. Smith's right of holding a seat in this body; but, in that respect, the authority of the committee extends only to proposal, and not to decision. But as he manifested a great solicitude to be heard before them, they obtained permission from the Senate to admit his attendance, communicated to him the evidence in their possession, by which he was inculpated, furnished him, in writing, with the questions arising from it, which appeared to them material, and received from him the information and explanations herewith submitted as part of the facts reported. But Mr. Smith has claimed, as a right, to be heard in his defense by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the committee had been a circuit court of the United States. But it is before the Senate itself that your committee conceived it just and proper that Mr. Smith's defense of himself should be heard. Nor have they conceived themselves bound in this inquiry by any other rules than those of natural justice and equity, due to a brother Senator on the one part and to their country on the other.

Mr. Smith represents himself, on this inquiry, as solitary, friendless, and unskilled, contending for rights which he intimates are denied him; and the defender of senatorial privileges which he seems apprehensive will be refused him by Senators, liable, so long as they hold their offices, to have his case made their own. The committee are not unaware that, in the vicissitudes of human events, no member of this body can be sure that his conduct will never be made a subject of inquiry and decision before the assembly to which he belongs. They are aware that, in the course of proceeding which the Senate may now sanction, its members are marking out a precedent which may hereafter apply to themselves. They are sensible that the principles upon which they have acted ought to have the same operation upon their own claims to privilege as upon those of Mr. Smith; the same relation to the rights of their constituents which they have to those of the legislature which he represents. They have deemed it their duty to advance in the progress of their inquiry with peculiar care and deliberation. They have dealt out to Mr. Smith that measure, which, under the supposition of

similar circumstances, they would be content to find imparted to themselves; and they have no hesitation in declaring that, under such imputations, colored by such evidence, they should hold it a sacred obligation to themselves, to their fellow Senators, and to their country, to meet them by direct, unconditional acknowledgment or denial, without seeking a refuge from the broad face of day in the labyrinth of technical forms.

In examining the question whether these forms of judicial proceedings, or the rules of judicial evidence, ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its members, let us assume, as the test of their application, either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents, domestic or foreign, and your committee believe that the result will be the same; that the power of expelling a member must, in its nature, be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.

The power of expelling a member for misconduct results, on the principles of common sense, from the interest of the nation, that the high trust of legislation should be invested in pure hands. When the trust is elective it is not to be presumed that the constituent body will commit the deposit to the keeping of worthless characters. But when a man, whom his fellow-citizens have honored with their confidence, on the pledge of a spotless reputation has degraded himself by the commission of infamous crimes, which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison had reached the heart.

The question upon the trial of a criminal cause, before the courts of common law, is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel, or by the operation of general rules in their unforeseen application to particular cases, that doubt must be decisive for acquittal, and the verdict of not guilty, perhaps, in nine cases out of ten, means no more than that the guilt of the party has not been demonstrated in the precise, specific, and narrow forms prescribed by law. The humane spirit of the laws multiplies the barriers for the protection of innocence, and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favorable to the person upon trial, and acknowledges the preference that ten guilty should escape rather than that one innocent should suffer. The interest of the public that a particular crime should be punished is but as one to ten compared with the interest of the party that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen; it restores him to no public trust; it invests him with no public confidence; it substitutes the sentence of mercy for the doom of justice; and in the eyes of impartial reason, in the great majority of cases, must be considered rather as a pardon than a justification.

But when a member of a legislative body lies under the imputation of aggravated offenses, and the determination upon his cause can operate only to remove him from a station of extensive powers and important trust, this disproportion between the interest of the public and the interest of the individual disappears; if any disproportion exist, it is of an opposite kind. It is not better that ten traitors should be

members of this Senate than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But, in the former it would strike at the vitals of the nation; in the latter it might, though deeply to be lamented, only be the calamity of an individual.

By the letter of the Constitution, the power of expelling a member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.

The spirit of the Constitution is, perhaps, in no respect more remarkable than in the solicitude which it has manifested to secure the purity of the Legislature by that of the elements of its composition. A qualification of age is made necessary for the members, to insure the maturity of their judgment; a qualification of long citizenship, to insure a community of interests and affections between them and their country; a qualification of residence, to provide a sympathy between every member and the portion of the Union from which he is delegated; and to guard, as far as regulation can guard, against every bias of personal interest, and every hazard of interfering duties, it has made every member of Congress ineligible to office which he contributed to create, and every officer of the Union incapable of holding a seat in Congress. Yet, in the midst of all this anxious providence of legislative virtue, it has not authorized the constituent body to recall in any case its representative. It has not subjected him to removal by impeachment; and when the darling of the people's choice has become their deadliest foe can it enter the imagination of a reasonable man that the sanctuary of their legislation must remain polluted with his presence, until a court of common law, with its pace of snail, can ascertain whether his crime was committed on the right or on the left bank of the river; whether a puncture of difference can be found between the words of the charge and the words of the proof; whether the witnesses of his guilt should or should not be heard by his jury; and whether he was punishable, because present at an overt act, or intangible to public justice, because he only contrived and prepared it? Is it conceivable that a traitor to that country which has loaded him with favors, guilty to the common understanding of all mankind, should be suffered to return unquestioned to that post of honor and confidence, where, in the zenith of his good fame, he had been placed by the esteem of his countrymen, and in defiance of their wishes, in mockery of their fears, surrounded by the public indignation, but inaccessible to its bolt, pursue the purposes of treason in the heart of the national councils? Must the assembled rulers of the land listen with calmness and indifference, session after session, to the voice of notorious infamy, until the sluggish step of municipal justice can overtake his enormities? Must they tamely see the lives and fortune of millions, the safety of present and future ages, depending upon his vote, recorded with theirs, merely because the abused benignity of general maxims may have remitted to him the forfeiture of his life?

Such, in very supposable cases, would be the unavoidable consequences of a principle which should offer the crutches of judicial tribunals as an apology for crippling the Congressional power of expulsion. Far different, in the opinion of your committee, is the spirit of our Constitution. They believe that the very purpose for which this power was given was to preserve the Legislature from the first approaches of infection. That it was made discretionary because it could not exist under the procrastination of general rules; that its process must be summary, because it would be rendered nugatory by delay.

Passing from the constitutional view of the subject to that which is afforded by the authority of precedent your committee find that, since the establishment of our present National Legislature, there has been but one example of expulsion from the Senate. In that case, the member implicated was called upon, in the first instance, to answer whether he was the author of a letter, the copy of which only was produced, and the writing of which was the cause of his expulsion. He was afterwards requested to declare whether he was the author of the letter itself, and declining, in both cases, to answer, the fact of his having written it was established by a comparison of his handwriting, and by the belief of persons who had seen him write, upon inspection of the letter. In all these points the committee perceive the admission of a species of evidence which in courts of criminal jurisdiction would be excluded, and, in the resolution of expulsion, the Senate declared the person inculpated guilty of a high misdemeanor, although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case.

This event occurred in July, 1797. About fifteen months before that time, upon an application from the legislature of Kentucky, requesting an investigation by the Senate of a charge against one of the members from that State, of perjury, which had been made in certain newspaper publications, but for which no prosecution had been commenced, the Senate did adopt, by a majority of 16 votes to 8, the report of a committee, purporting that the Senate had no jurisdiction to try the charge, and that the memorial of the Kentucky legislature should be dismissed. There were, indeed, very sufficient reasons of a different kind assigned in the same report for not pursuing the investigation, in that particular case, any further; and your committee believe that, in the reasoning of that report some principles were assumed and some inferences drawn which were altogether unnecessary for the determination of that case, which were adopted without a full consideration of all their consequences, and the inaccuracy of which were clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress since the adoption of the Constitution. And the subject being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment, and not enough upon the numerous contingencies to which the general question might apply. Your committee state this opinion with some confidence, because of the sixteen Senators who, in March, 1796, voted for the report dismissing the memorial of the Kentucky legislature, eleven, on the subsequent occasion, in July, 1797, voted also for that report, which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate. Yet, if the principles advanced in the first report had been assumed as the ground of proceeding at the latter period, the Senate would have been as impotent of jurisdiction upon the offense of Mr. Blount as they had supposed themselves upon the allegation against Mr. Marshall.

Those parts of the fifth and sixth articles, amendatory to the Constitution, upon which the report in the case of Mr. Marshall appears to rely for taking away the jurisdiction of the Senate, your committee suppose can only be understood as referring to prosecutions at law. To suppose that they were intended as restrictions upon powers expressly granted by the Constitution to the Legislature, or either of its branches, would, in a manner, annihilate the power of impeachment as well as that of expulsion. It would lead to the absurd conclusion that the

authority given for the purpose of removing iniquity from the seats of power should be denied its exercise in precisely those cases which most loudly call for its energies. It would present the singular spectacle of a Legislature vested with powers of expelling its members, of impeaching, removing, and disqualifying public officers, for trivial transgressions beneath the cognizance of the law, yet forbidden to exert them against capital or infamous crimes.

Those two articles were in substance borrowed from similar regulations contained in that justly celebrated statute which for so many ages has been distinguished by the name of the Great Charter of England. Yet in that country, where they are recognized as the most solid foundations of the liberties of the nation, they have never been considered as interfering with the power of expelling a member, exercised at all times by the House of Commons; a power which there, however, rests only upon parliamentary usage, and has never been bestowed, as in the Constitution of the United States, by any act of supreme legislation. From a number of precedents which have been consulted, it is found that the exercise of this authority there has always been discretionary, and its process always far otherwise than compendious in the prosecutions before the judicial courts. So far, indeed, have they been from supposing a conviction at law necessary to precede a vote of expulsion, that, in one instance, a resolution to demand a prosecution appears immediately after the adoption of the resolution to expel. In numerous cases the member submits to examination, adduces evidence in his favor and has evidence produced against him, with or without formal authentication; and the discretion of the House is not even restricted by the necessary concurrence of more than a bare majority of the votes.

The provision in our Constitution which forbids the expulsion of a member by an ordinary majority, and requires for this act of rigorous and painful duty the assent of two-thirds, your committee consider as a wise and sufficient guard against the possible abuse of this legislative discretion. In times of heat and violent party spirit, the rights of the minority might not always be duly respected, if a majority could expel their members under no other control than that of their own discretion. The operation of this rule is of great efficacy, both over the proceedings of the whole body, and over the conduct of every individual member. The times when the most violent struggles of contending parties occur—when the conflict of opposite passions is most prone to excess—are precisely the times when the numbers are most equally divided. When the majority amounts to the proportion of two-thirds, the security in its own strength is of itself a guard against extraordinary stretches of power; when the minority dwindles to the proportion of one-third, its consciousness of weakness dissuades from any attempts to encroach upon the rights of the majority, which might provoke retaliation. But if expulsion were admissible only as a sequel to the issue of a legal prosecution, or upon the same principles and forms of testimony which are established in the criminal courts, your committee can see no possible reason why it should be rendered still more imbecile by the requisition of two-thirds to give it effect.

It is now the duty of your committee to apply the principles which they have here endeavored to settle and elucidate to the particular case upon which the Senate have directed them to report. The bills of indictment found against Mr. Smith at the late session of the circuit court of the United States at Richmond (copies of which are herewith submitted) are precisely similar to those found against Aaron Burr. From the volume of printed evidence communicated by the President

of the United States to Congress, relating to the trial of Aaron Burr, it appears that a great part of the testimony which was essential to his conviction, upon the indictment for treason, was withheld from the jury upon an opinion of the court that Aaron Burr, not having been *present* at the overt act of treason alleged in the indictment, no testimony relative to his conduct or declarations elsewhere, and subsequent to the transactions on Blennerhassett's Island, could be admitted. And in consequence of this suppression of evidence, the traverse jury found a verdict "that Aaron Burr was not proved to be guilty, under that indictment, by any evidence submitted to them." It was also an opinion of the court, that none of the transactions, of which evidence was given on the trial of Aaron Burr, did amount to an overt act of levying war, and, of course, that they did not amount to treason. These decisions, forming the basis of the issue upon the trials of Burr, anticipated the event which must have awaited the trials of the bills against Mr. Smith, who, from the circumstances of his case, must have been entitled to the benefit of their application; they were the sole inducements upon which the counsel for the United States abandoned the prosecution against him.

Your committee are not disposed now to question the correctness of these decisions on a case of treason before a court of criminal jurisdiction. But whether the transactions proved against Aaron Burr did or did not amount, in technical language, to an overt act of levying war, your committee have not a scruple of doubt on their minds that, but for the vigilance and energy of the Government, and of faithful citizens under its directions, in arresting their progress and in crushing his designs, they would in a very short lapse of time have terminated not only in a war, but in a war of the most horrible description, in a war at once foreign and domestic. As little hesitation have your committee in saying, that, if the daylight of evidence, combining one vast complicated intention, with overt acts innumerable, be not excluded from the mind by the curtain of artificial rules the simplest understanding can not but see what the subtlest understanding can not disguise—crimes before which ordinary treason whitens into virtue; crimes of which war is the mildest feature. The debauchment of our Army, the plunder and devastation of our own and foreign territories, the dissolution of our national Union, and the root of interminable civil war, were but the means of individual aggrandizement, the steps to projected usurpation. If the ingenuity of a demon were tasked to weave, into one composition, all the great moral and political evils which would be inflicted upon the people of these States, it could produce nothing more than a texture of war, dismemberment, and despotism.

Of these designs, a grand jury, composed of characters as respectable as this nation can boast, have, upon the solemnity of their oaths, charged John Smith with being an accomplice. The reasons upon which the trial of this charge has not been submitted to the verdict of a jury have been shown by your committee, and are proved by the letter from the attorney of the United States, for the district of Virginia, herewith reported. And your committee are of the opinion that the dereliction of the prosecution on these grounds can not, in the slightest degree, remove the imputation which the accusations of the grand jury have brought to the door of Mr. Smith.

Your committee will not permit themselves to comment upon the testimony which they submit herewith to the Senate; nor upon the answers which Mr. Smith has given as sufficient for his justification.

Desirous as the committee have been that this justification might be complete, anxiously as they wished for an opportunity of declaring their belief of his innocence, they can neither control nor dissemble the operation of the evidence upon their minds; and, however painful to their feelings, they find themselves compelled, by a sense of duty, paramount to every other consideration, to submit to the Senate, for their consideration, the following resolution:

Resolved, That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the *peace, union, and liberties* of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States. And that he be therefore, and hereby is, expelled from the Senate of the United States.

Mr. Smith submitted an answer, which was returned to him, in order that certain "exceptionable matter" might be stricken out, and on Monday, January 4, 1808, his revised answer was received. In said answer or letter Mr. Smith asked, first, that he might be heard by counsel, and second, that he might have an opportunity of a trial under the same rules of evidence as prevail in judicial tribunals. A long debate followed, participated in by Messrs. Adams, Samuel L. Mitchell of New York, Mr. James Hillhouse of Connecticut, Mr. James A. Bayard of Delaware, Mr. Anderson of Tennessee, Mr. William H. Crawford of Georgia, Mr. William B. Giles of Virginia. (*See* Pp. 66 to 78.) The motion of Mr. Hillhouse that Mr. Smith be heard by counsel not exceeding two was then carried unanimously.

On January 13 Mr. Smith named as his counsel Luther Martin and Francis S. Key as counsel, but Mr. Martin was rejected, and subsequently Mr. R. G. Harper was admitted as counsel in his stead. Mr. Smith's affidavit was read and also his application requesting a reasonable time in which to procure the testimony therein stated. The subject was debated and further debated on January 14, 15, 16, 18, 19, 20, and the subject postponed until March 1. The case was further considered on March 1, 2, 3, 4, and 15.

On the last-named date a letter from Mr. Smith was presented by counsel, asking a further extension of time in which to prepare his defense, and a motion to further postpone said case was negatived. It was resumed on March 16, and on a motion to postpone until the first Monday of April was negatived by the casting vote of Vice-President Clinton and the motion of Mr. Bayard to postpone until April 1 carried by yeas 17, nays 15, as stated (*see* Annals, p. 170). On said day counsel for defense opened the argument by reading depositions, and on April 5 and 6 Messrs. Key and Harper argued the case at length (*see ante*). On April 9 the vote was taken, resulting as stated in the negative, yeas, 19; nays, 10. (*See* Annals, pp. 265 to 324.)

ATTEMPTED BRIBERY AND CORRUPTION—CONTEMPT, AND BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES.

FIFTEENTH CONGRESS, FIRST SESSION; HENRY CLAY, OF KENTUCKY, SPEAKER.

CASE OF JOHN ANDERSON.

This case is undoubtedly the most important of the class embraced in this compilation—all things considered—which has arisen in either House of Congress since the formation of the Government.

Originally presented to the House of Representatives on January 7, 1818, by Mr. Lewis Williams, of North Carolina, as an attempt at bribery on the part of said Anderson in respect to a pending measure and proposed legislation, it immediately took the form of a "Contempt and Breach of Privileges of the House," causing an extended debate—in which the leading members of the House participated—as to the power of the House of Representatives to punish individuals for attempts to bribe or corrupt one or more of its members.

In order to make the record official, all extracts from the Journal relating to the case are given in full, but these would not present the case properly without reference to the debates, which occupied almost wholly eight days' sittings of the House, and led to important rulings and statements by Speaker Clay as to the proper procedure, the House having but two precedents for its guidance, viz, the cases of Robert Randall and Charles Whitney, in the House of Representatives (*see ante*, p. 3), Fourth Congress, First session, and that of William Duane in the Senate (*see ante*, p. 7), Sixth Congress, First session.

The following are extracts from the Journal of the House of Representatives, giving all proceedings had in this case:

JANUARY 7, 1818 (p. 117).

* * * * *

Mr. Williams, of North Carolina, laid before the House the following letter and statement:

“WASHINGTON CITY, *January 6, 1818.*

“The Hon. LEWIS WILLIAMS:

“HONORED SIR: I return you thanks for the attention I received on my claims to pass so soon.

“Mr. Lee will hand you some claims from the River Raisin, which will pass through your honorable committee, and I have a wish that the conduct of the British in that country may be related in full on the floor of Congress; which will give you some trouble in making out the report and supporting the same.

“I have now to request that you will accept of the small sum of \$500, as part pay for the extra trouble I give you. I will present it to you so soon as I receive some from Government. This is confidential, that only you and me may know anything about it; or, in other words, I give it to you as a man and a Mason, and hope

you belong to that society. Sir, should it happen that you will not accept of this small sum, I request you will excuse me. If you do not accept, I wish you to drop me a few lines. If you accept, I wish no answer. I hope you will see my view on this object; that it is for extra trouble.

"I will make out a statement and present the same to the committee, which will be supported by Gen. Harrison, Col. Johnson, Mr. Halbard, Mr. Meigs, Postmaster-General, Governor Cass' report as commissioner, and others. Relying on your honor as to keeping this a secret, and your exertions in passing those claims as soon as possible, I need not inform you that we are, as poor unfortunate orphan children, having no representation in Congress, so must look on your honorable body as our guardians. Pardon this liberty from a stranger.

"I remain, with high esteem, your most obedient humble servant,

"JOHN ANDERSON."

After breakfast this morning, George, a servant, came into the dining room and told me that a gentleman was in my room waiting to see me. I stepped into my room, and Col. John Anderson was there. He handed me a letter, observing at the same time that he had prepared that letter for me, and that perhaps it would require some explanation. I read over the letter with attention; and having done so, observed to Col. Anderson it was a very surprising communication. I then started to Mr. Wilson's room, immediately adjoining my own. When in the act of opening my own door Col. Anderson begged I would not show the letter. I made no reply to this, but stepped to Mr. Wilson's room and asked him to do me the favor to walk into my room. This Mr. Wilson did, following on immediately behind me. After we had got into my room, in the presence of Col. Anderson, I handed the letter to Mr. Wilson and, observing that it was a very extraordinary communication, requested him to read it. When Mr. Wilson had read or was nearly done reading the letter, I told Col. Anderson that I repelled with indignation and contempt the offer he made to me in the letter. Col. Anderson said he asked my pardon; that it was designed only as a small compensation for the extra trouble he expected to give the Committee of Claims in examining the claims from the Michigan Territory and exposing the conduct of the British during the war; that it was foreign from his intention to attempt anything like a bribe, and requested me to burn the letter or give it to him. I told him that I would do neither; that his offense was unpardonable, such as I could not forgive, and ordered him to leave the room instantly. Col. Anderson then begged pardon and asked forgiveness with excessive earnestness. I told him I would listen to none of his apologies; that his offense was an attack upon the integrity of Congress generally, and upon mine personally and particularly; that no one should ever have my pardon, or expect my forgiveness, who should suppose me capable of such an influence as he had attempted to practice upon me. Again I told Col. Anderson to leave my room. He advanced to the door, where he stood for some time, endeavoring to obtain my pardon, as he said. I told him it was vain to ask it; that, as a member of Congress and of the Committee of Claims, it was my duty to examine his claims, and if just, support them, but if unjust to oppose them; that his offer was an attempt at bribery; was an attempt to influence my mind in opposition to my duty, and as such could not be forgiven. He then desired me either to burn the letter or give it to him. I replied that I should do neither, and again ordered him to leave my room, whereupon he did leave the room. Mr. Wilson, after talking on the subject of the letter for some time, suggested to me the propriety of calling in Mr. William P. Maclay. I stepped to his room, but as Mr. William P. Maclay was not in, I asked Mr. William Maclay, the roommate of Mr. William P. Maclay, to come to my room. He complied with the request, and shortly after we arrived in my room Mr. William P. Maclay also stepped in. These gentlemen—Mr. Wilson, Mr. William Maclay, and Mr. William P. Maclay—were in my room at the time the servant called to Mr. Wilson and said a gentleman was below, wishing to see him. Mr. Wilson walked out of the room, and was gone a few minutes. After he returned, he observed that Col. Anderson was the person who had sent for him; that Col. Anderson's business was to obtain his interference to put a stop to further proceedings on the subject of his letter to me. The precise conversation between Mr. Wilson and Col. Anderson can be related by the former with minuteness.

LEWIS WILLIAMS.

JANUARY 7, 1818.

The said letter and statement being read;
On motion of Mr. Forsyth,

Resolved, unanimously, That Mr. Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of John Anderson, and the same in his custody to keep, subject to the further order and direction of this House.

A warrant pursuant to the said resolution was accordingly prepared, signed by Mr. Speaker under his seal, attested by the Clerk, and delivered to the Sergeant with orders to execute the same, and make due return thereof to the House.

JANUARY 8, 1818 (p. 124).

* * * * *

The Speaker communicated to the House that the Sergeant-at-Arms had executed the warrant awarded by this House and issued on yesterday against John Anderson, and had the body of the said John Anderson in custody, to await the further order of the House in his case; whereupon,

Mr. Forsyth moved the following resolution:

Resolved, That a committee of privileges, to consist of seven members, be appointed, and that said committee be instructed to report a mode of proceeding in the case of John Anderson, who has been taken into custody by order of the House, and that the said committee have leave to sit immediately.

The resolution was agreed to, and Mr. Forsyth, Mr. Hopkinson, Mr. Tucker, of Virginia, Mr. Sergeant, Mr. Johnson, of Kentucky, Mr. Pitkin, and Mr. Taylor were appointed a committee of privileges, pursuant to the provisions thereof.

The committee retired, and after some time returned, when Mr. Forsyth made the following report, viz:

The Committee of Privileges, according to the instructions given them, report the following resolution:

Resolved, That John Anderson be brought to the bar of the House, and interrogated by the Speaker, on written interrogatories, touching the charge of writing and delivering a letter to a member of the House offering him a bribe, which, with his answers thereto, shall be entered on the minutes of the House; and that every question proposed by a member be reduced to writing, and a motion made that the same be put by the Speaker; and the question and answer shall be entered on the minutes of the House. That after such interrogatories are answered, if the House deem it necessary to make further inquiry on the subject, the same be conducted by a committee to be appointed for that purpose.

Which being read, Mr. Beecher moved to commit the same to a Committee of the Whole House to-day. And the question being taken thereon, it was determined in the negative.

The question was then taken on agreeing to the said resolution, and passed in the affirmative.

The said John Anderson then appeared at the bar of the House, in custody of the Sergeant-at-Arms, when Mr. Speaker addressed him as follows:

You have been brought before this House in consequence of having written and delivered to a member, who is chairman of one of the committees of this House, a letter, with the character and contents of which you must be well acquainted. Before I proceed to propound to you any interrogatories on this subject, I will inform you that if you have any request to make of the House, if you wish for counsel, for reasonable time to prepare your defense, for witnesses, or for any other privilege whatever belonging to persons in similar situations, the House will take your request into consideration. If you do not wish for time, for counsel, or for witnesses, and are now ready to proceed in your trial, I will put to you such interrogatories as may seem to be proper.

To which he answered, that he was a stranger here; had some friends here, though few; that he desired the assistance of counsel, and compulsory process to obtain the attendance of witnesses in his favor, which he thought he could procure by to-morrow.

He was then remanded, and retired in custody of the Sergeant-at-Arms.

When Mr. Forsyth moved the following resolution:

Resolved, That John Anderson be allowed counsel according to his request; that he have until to-morrow till 1 o'clock to procure the testimony he may wish; and that the Clerk of this House be directed to furnish the necessary process to compel the attendance of such witnesses on his behalf as he may name.

Which being read, Mr. Herrick moved to amend the same by subjoining thereto the following:

And that the said John Anderson be furnished by the Clerk with a copy of the letter which is the ground of the proceeding against him; and also the accompanying statement from the member from North Carolina.

And the question being taken thereon, it passed in the affirmative, and the resolution as amended was then agreed to by the House.

The said John Anderson was again brought to the bar and the provisions of the said resolution were communicated to him by the Speaker.

Whereupon, he was remanded into custody as aforesaid.

And then the House adjourned.

JANUARY 9, 1818 (p. 129).

* * * * *

Mr. Spencer submitted the following preamble and resolutions:

The House of Representatives, entertaining great doubts of its possessing the competent power to punish John Anderson for his contempt to the House, and his outrage upon one of its members:

Resolved, That all further proceedings in this House against the said John Anderson do cease, and that he be discharged from the custody of the Sergeant-at-Arms.

Resolved, That the Attorney-General of the United States be directed to institute such proceedings against the said John Anderson, for his said offense, as may be agreeable to the laws of the United States and of the District of Columbia.

Resolved, That the Committee on the Judiciary be instructed to inquire into the expediency of providing by law for the punishment of any contempt of the Senate or House of Representatives of the United States, and of any breach of the privileges of either House.

The said preamble and resolutions were read, and the question was stated on agreeing thereto; and, debate arising thereon, the House adjourned.

JANUARY 10, 1818 (p. 131.)

* * * * *

The Speaker laid before the House a letter from John Anderson, communicating his desire that any constitutional or other question which may have arisen to prevent his further examination at the bar of the House may be waived; and also informing the House that he had declined the assistance of counsel.

Ordered, That the said letter lie on the table.

The House resumed the consideration of the resolutions submitted yesterday by Mr. Spencer; when Mr. Forsyth moved that the said resolutions be laid on the table, that the House may proceed to the examination of the accused;

And the question being taken thereon, it was determined in the negative.

The question then recurred on agreeing to the said resolutions; and, after further debate thereon, the House adjourned.

JANUARY 12, 1818 (P. 134).

* * * * *

The House resumed the consideration of the resolutions submitted on the 9th instant by Mr. Spencer, concerning John Anderson; when

A motion was made by Mr. Rhea to amend the preamble prefixed to said resolutions by striking out these words, viz, "entertaining great doubts of its;" and after debate thereon, the House adjourned.

JANUARY 13, 1818 (p. 139).

* * * * *

The House then resumed the consideration of the resolutions submitted on the 9th instant by Mr. Spencer in relation to the case of John Anderson, and the question, depending yesterday on an amendment moved by Mr. Rhea to the preamble prefixed to the said resolutions, recurred and being stated, Mr. Spencer modified the resolutions so as to leave out the said preamble.

A motion was then made by Mr. Rhea to amend the said resolutions by striking out from the word "Resolved," at the commencement of the first resolution, to the end of the last resolution, and in lieu thereof to insert as follows, viz:

That this House possesseth competent power to punish John Anderson for his contempt of the House and his outrage on one of its members; and, therefore,

Resolved, That the Sergeant-at-Arms be directed to conduct John Anderson to the bar of the House.

The question being stated to agree to this amendment, upon which further debate arose, and the House adjourned.

JANUARY 14, 1818 (p. 142).

* * * * *

The House resumed the consideration of the resolutions submitted by Mr. Spencer, on the 9th instant, in relation to the case of John Anderson, and the question recurred on the amendment proposed by Mr. Rhea, and depending yesterday at the time of adjournment; whereupon

Mr. Rhea modified his said amendment to read as follows:

That this House possesseth competent power to punish for contempts of its authority; therefore,

Resolved, That the Sergeant-at-Arms be directed to conduct John Anderson to the bar of this House.

And the question being stated to agree to the said amendment as modified, upon which further debate arose, and the House adjourned.

JANUARY 15, 1818 (p. 145).

* * * * *

The House resumed the consideration of the resolutions submitted on the 9th instant by Mr. Spencer in relation to the case of John Anderson, and the question again recurred on the amendment proposed by Mr. Rhea, and depending yesterday at the time of adjournment; whereupon

Mr. Rhea again modified his said amendment so as to read as follows:

That the House of Representatives possesses adequate power to punish contempts against it.

A motion was then made by Mr. Pitkin that the further consideration of the resolutions submitted by Mr. Spencer, together with the amendment offered thereto, be postponed indefinitely;

And the question being taken thereon, it passed in the affirmative—yeas, 117; nays, 42.

* * * * *

Mr. Tallmadge then submitted the following resolution, viz:

Resolved, That John Anderson be brought forthwith to the bar of this House.

And the question being stated thereon,

Mr. Rich moved to amend the same by inserting the following words, viz:

While this House disclaims all right to adjudge and execute punishment on any person or persons whatever, its members only excepted, it will never abstain from any measures of precaution which may be necessary to preserve its deliberations free from interruption, and protect its members and officers from insult or abuse; and, therefore, resolved:

And on the question to agree to this amendment, it was determined in the negative.

Mr. Culbreth then moved the following amendment:

After the word "Resolved," in the first line, strike out the residue of the resolution, and in lieu thereof insert:

Whereas John Anderson is in the custody of the Sergeant-at-Arms for an offense which this House does not possess the constitutional right to try or power to punish: Therefore,

Resolved, That the said John Anderson be discharged from the custody of the Sergeant-at-Arms.

And the question being taken thereon: it was determined in the negative—yeas, 47; nays, 119.

* * * * *

The question then recurred on the resolution proposed by Mr. Tallmadge; and being taken, it passed in the affirmative—yeas, 118; nays, 45.

* * * * *

Whereupon, the said John Anderson was brought to the bar of this House in custody of the Sergeant-at-Arms;

And being at the bar as aforesaid,

Mr. Speaker, pursuant to the rules prescribed in the resolution of the 8th instant, propounded in succession the following interrogatories:

(1) Do you acknowledge yourself to be John Anderson?—Answer. Yes.

(2) Did you write and deliver to Lewis Williams, a member of this House, the letter of which a copy has been furnished you by the clerk?—Answer. I did.

(3) From what part of the city did you write the letter?—Answer. I wrote it at Mr. Bestor's, where I board.

(4) What is the amount of your own claims, which you are attempting to liquidate?—Answer. About \$9,000.

(5) What is the amount of those of others which you are soliciting?—Answer. About \$21,000.

(6) Have you any interest in the latter?—Answer. None of a pecuniary kind, but am influenced in their pursuit by motives of charity.

(7) Had you any authority from the persons you represent to make the offer contained in your letter?—Answer. I have a general power of attorney to do for them as I would do for myself, but had no instructions to make that or any other offer.

(8) Are you acquainted with any persons now in the city soliciting the claims of others? If so, name them.—Answer. I am. There is a

Mr. Pomeroy, who is soliciting his own claims, and Col. Watson, who is a general agent.

(9) Have you made any other offer to any person?—Answer. No.

(10) Did you consult or advise with any person before you wrote and delivered the letter?—Answer. I did not.

(11) Who is the Mr. Halbard you mention in the letter?—Answer. He is a gentleman I became partially acquainted with during the troubles at River Raisin. I have not seen him since that time, till I arrived in this city at the present session of Congress, and did not recognize him until he made himself known to me.

(12) Has he any claims to solicit?—Answer. None to my knowledge.

(13) Have you any witnesses to examine or defense to make in justification or explanation of your conduct? If you have, the House is now ready to hear you.

The said John Anderson then stated that he had a written defense to make and sundry witnesses to examine whom he wished to be examined previous to the offer of his defense.

Whereupon sundry witnesses were called to the bar of the House, and being sworn by the Speaker were examined by the said John Anderson and by the Speaker, and minutes of their examination were taken down.

A question being made as to the course of interrogation of a witness under examination, and debate arising thereon;

The said John Anderson was remanded into the custody of the Sergeant-at-Arms, and the House adjourned.

JANUARY 16, 1818 (p. 153).

* * * * *

The Speaker laid before the House a letter from Joseph Watson, a witness in the case of John Anderson, explanatory of a part of his conduct yesterday while under examination, which was ordered to lie on the table.

The Sergeant-at-Arms was then again directed to bring John Anderson to the bar of the House; whereupon the said John Anderson appeared at the bar, when he was further interrogated by the Speaker, to which he gave the answers annexed to each interrogatory, viz:

Question 1. Are you a native of the United States?—Answer. I am not.

Question 2. In what country was you born?—Answer. In Scotland. I was brought to the United States by my father when I was 3 years old. We settled on the Susquehanna River, in the State of Pennsylvania. My father was killed by the Indians in the Revolutionary war. All our property was destroyed, and my mother, with four of her young children, were carried by the Mohawk Indians into captivity in the British province of Canada. After the Revolutionary war I went into Canada in search of my mother and brothers and sisters, and finally settled at Detroit.

Question 3. Have you been naturalized?—Answer. I have. I was naturalized when Gen. Wayne took possession of Detroit and that part of the country which now forms the Territory of Michigan.

Question 4. In writing the letter to Lewis Williams, a member of this House from North Carolina, in which you offer to him the sum of \$500 for services to be performed by him in relation to claims for losses sustained during the late war, had you or had you not any intention to induce him to support your claims against his own convictions of their justice, or to interfere with the discharge of his legislative duties, or to

offer any contempt to the dignity of the House of Representatives?—Answer. No, sir. I call God to witness that, which is the most sacred appeal I can make. I repeatedly assured him that the offer was made without any wish to influence his opinions in any degree.

The remaining witnesses summoned on the part of the prisoner at the bar were then called and examined, and minutes of their evidence were taken down, after which he was questioned by the Speaker whether he had any other testimony to offer in his behalf; to which he replied that he had not.

The Speaker then informed him he was at liberty to proceed in the defense which he had intimated it was his intention to offer.

Col. Anderson was, thereupon, heard in his defense (*see Annals*), and, after concluding the same, was remanded into the custody of the Sergeant-at-Arms.

Mr. Forsyth offered the following resolution:

Resolved, That John Anderson has been guilty of a contempt and a violation of the privileges of the House, and he be brought to the bar of the House on Wednesday next and be there reprimanded by the Speaker for the outrage he has committed and then discharged from the custody of the Sergeant-at-Arms.

The said resolution was read; and a motion was made by Mr. Harrison to amend the same by striking out "Wednesday next," and in lieu thereof to insert "Monday next;" which motion was rejected by the House.

The said resolution was then amended by striking out "on Wednesday next," and inserting "this day."

A motion was then made by Mr. Alexander Smyth further to amend the said resolution by striking out from the word "Resolved," to the end thereof, and in lieu thereof to insert:

That John Anderson hath committed a high contempt against the privileges of this House.

Resolved, That the said John Anderson, for his said offense, be immediately reprimanded by the Speaker of this House; and that in consideration of his sacrifices, sufferings, and attachment to the United States, the said John Anderson be thereupon discharged without any further punishment.

A motion was made by Mr. Forsyth to amend the said amendment by striking out the word "sacrifices" and the words "and attachment to the United States."

And the question being taken thereon, it passed in the affirmative.

A motion was then made by Mr. Poindexter further to amend the said amendment moved by Mr. A. Smyth by striking out the words "against the privileges."

And the question being taken on this amendment, it was determined in the negative—yeas, 54; nays, 108.

* * * * *

The said amendment was further amended, and on the question to agree thereto as amended it was determined in the negative.

Mr. Culbreth then moved to amend the resolution submitted by Mr. Forsyth, as follows:

Strike out all after the word "Resolved," and insert:

That John Anderson has been guilty of an attempt to commit the infamous crime of bribery; but as this House does not possess the constitutional right to punish the said John Anderson: Therefore,

Resolved, That the said John Anderson be discharged from the custody of the Sergeant-at-Arms.

And the question being taken thereon, it was determined in the negative.

The question was then taken on the resolution submitted by Mr. Forsyth, as amended, and passed in the affirmative.

John Anderson then appeared at the bar of the House, and was, in pursuance of the resolution adopted for that purpose, reprimanded by the Speaker and discharged from the custody of the Sergeant-at-Arms.

The reprimand of Speaker Clay is as follows:

John Anderson: You have been brought before this House upon a charge of having committed a breach of its privilege in attempting to bribe one of its members filling a high and responsible situation. The House has patiently heard you in your defense, and in proportion to the pleasure which it has derived from the concurrent testimonies in support of your character and good conduct heretofore is its deep regret that you have deliberately attempted to commit a crime so entirely incompatible with the high standing you have heretofore maintained. You have the less apology for the attempt which you made, because you had yourself experienced the justice of this House but a few days before by the passage of two bills in your favor founded on petitions presented to the House. Your attempt to corrupt the fountain of legislation—to undermine the integrity of a branch of the National Legislature—is a crime of so deep a dye that even you must acknowledge and be sensible of it. And if, John Anderson, you could have been successful in such an attempt—if it were possible that representatives of the people could have been found so lost to their duty as to accept your offer—you must yourself see the dreadful consequence of such a deplorable state of things. In your turn you might fall a victim, for your rights, your liberty, and your property might in the end equally suffer with those of others. The House has seen with pleasure that at a very early period after making your base offer you disclaim, with symptoms of apparent repentance and contrition, any intention to corrupt the integrity of a member; and, in directing me to pronounce your discharge, the House indulges the hope that, on your return home, you will be more fully convinced of the magnitude of your offense, and by the future tenor of your life endeavor to obliterate, as far as may be possible, the stain your conduct on this occasion has impressed on the high and honorable character you appear to have previously sustained. You are discharged from the custody of the Sergeant-at-Arms.

No proper abstract of these debates, which occupy 198 columns of the "Annals of Congress," filled as they are with precedents from the history of the House of Commons, extracts from debates in the convention which framed the Constitution, as well as from the writings and speeches of the distinguished "fathers of the Republic," could possibly be made in the time permitted—while their length precludes the possibility of their insertion entire in this compilation. In view of their historical value, and as furnishing what may properly be termed the "contemporaneous construction" of the Constitution as to the powers of the two Houses of Congress in this regard, as well as for convenience of reference, the following abstract, giving dates, pages, and names of those participating in the debates, is given:

JANUARY 7, 1818 (pp. 580, 581, 582, and 583).

Messrs. Lewis Williams of North Carolina, William Wilson of Pennsylvania, John Forsyth of Georgia, William Henry Harrison of Ohio, Richard M. Johnson of Kentucky, Nathaniel Terry of Connecticut, and Arthur Livermore of New Hampshire. (*See also* rulings of Speaker Clay, p. 583.)

JANUARY 8 (pp. 592 to 609).

Messrs. Philemon Beecher of Ohio, Forsyth of Georgia, Livermore of Georgia, Henry St. George Tucker of Virginia, Joseph Hopkinson of Pennsylvania, Timothy Pitkin of Connecticut, John Sergeant of Pennsylvania, William Lee Ball of Virginia, Thomas H. Hubbard of New York, Johnson of Kentucky, Terry of Connecticut, Oliver C. Comstock of New York, and Samuel Herrick of Ohio.

JANUARY 9 (pp. 611 to 646).

Messrs. Spencer of New York, Richard C. Anderson, jr., of Kentucky, Forsyth of Georgia, Philip P. Barbour of Virginia, Thomas B. Robertson of Louisiana, Tucker of Virginia, Charles F. Mercer of Virginia, and James Ervin of South Carolina.

JANUARY 10 (pp. 650 to 677).

Messrs. Forsyth of Georgia, Pitkin of Connecticut, Spencer of New York, Harrison of Ohio, Hopkinson of Pennsylvania, George Poin-dexter of Mississippi, Joseph Desha of Kentucky, Charles Rich of Vermont, Beecher of Ohio, John Holmes of Massachusetts, Henry R. Storrs of New York, and James Pindall of New York.

JANUARY 12 (pp. 678 to 710).

Messrs. Tunstall Quarles, jr., of Kentucky, Louis McLane of Delaware, Alexander Smyth of Virginia, Thomas Settle of North Carolina, John Rhea of Tennessee, and Barbour of Virginia.

JANUARY 13 (pp. 712 to 737).

Messrs. Spencer of New York, James Tallmadge, jr., of New York, Hopkinson of Pennsylvania, and Rhea of Tennessee.

JANUARY 14 (pp. 737 to 772).

Messrs. Clifton Claggett of New Hampshire, Ezekiel Whitman of New Hampshire, Forsyth of Georgia, and Beecher of Ohio.

JANUARY 15 (pp. 773 to 782).

Messrs. Rhea of Tennessee, Pitkin of Connecticut, Rich of Vermont, Johnson of Kentucky, Thomas W. Cobb of Georgia, Holmes of Massachusetts, George F. Strother of Virginia, Thomas W. Nelson of Virginia, and Tallmadge of New York. (*See also* rulings of Speaker Clay, p. 781.)

JANUARY 16 (pp. 786 to 790).

Proceedings, testimony, statement of Anderson to the House, vote that Speaker reprimand Anderson, and that he be then discharged from custody. Reprimand by Speaker Clay. In the following (second) session the Speaker, on December 28, 1818, laid before the House a letter from Thomas Dunn, Sergeant-at-Arms, stating that John Anderson had instituted a suit against him on a charge of false imprisonment, in consequence of his arresting the said Anderson in obedience to an order of the House of Representatives of January 7, last, which letter was referred to the Committee on the Judiciary.

On December 29, Mr. Hugh Nelson, of Virginia, reported the following resolution, which was agreed to, viz:

Resolved, That the Speaker of this House be authorized and requested to employ such counsel as he shall think proper to defend the said Thomas Dunn in the suit brought against him by John Anderson, as stated in the letter of the said Thomas Dunn, and that the expense of such counsel be defrayed out of the contingent fund of the House.

The case was tried in the circuit court for the District of Columbia, and took the form of an action for assault and battery and false impris-

onment against Thomas Dunn, as Sergeant-at-Arms of the House of Representatives. Judgment was given for the defendant, and the case was taken to the Supreme Court, which, in a unanimous decision delivered by Mr. Justice Johnson, at the February term in 1821, affirmed the judgment of the court below.

Being the first decision of the Supreme Court of the United States as to the power of the House of Representatives to take cognizance of contempts committed against that body under any circumstances, the case is given in full from 6 Wheaton, 204. It is proper to remark as a matter of information that this decision remained unquestioned until the October term of the Supreme Court, 1880, when, in the case of *Kilbourn v. Thompson* (103 U. S. Reports S. C., 168), it was commented on—the cases being in many respects analogous—and some of the reasoning of that opinion overruled and rejected. (See index for reference to appendix of judicial decisions where the said case appears in full.)

**BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—
ASSAULT UPON A REPRESENTATIVE.**

**TWENTY-SECOND CONGRESS, FIRST SESSION. ANDREW STEVENSON, OF VIRGINIA,
SPEAKER.**

CASE OF SAMUEL HOUSTON.

SATURDAY, APRIL 14, 1832.

This case is included for the reason that it is the first case where a member of either House of Congress was assaulted for words "spoken in debate" which was made the subject of investigation by either House and the assailant punished either by fine, imprisonment, or reprimand. The debate in respect to the powers and privileges of each House of Congress on the subject is very full, and many precedents are cited. See Senate report No. 170, first session, Thirty-first Congress, in respect to the altercation between Senators Benton, of Missouri, and Foote, of Mississippi, on April 17, 1850, when the latter drew a pistol, in front of the Secretary's desk, as Senator Benton was approaching him. No action was taken by the Senate thereon. See also Senate report in the case of Representative Preston S. Brooks, of South Carolina, for assault upon Senator Charles Sumner, of Massachusetts, *post* p. 81.

The Speaker laid before the House the following communication, viz:

To the honorable ANDREW STEVENSON,
Speaker of the House of Representatives:

SIR: I was waylaid in the street, near to my boarding house, last night about 8 o'clock, and attacked, knocked down by a bludgeon, and severely bruised and wounded by Samuel Houston, late of Tennessee, for words spoken in my place in the House of Representatives, by reason of which I am confined to my bed and unable to discharge my duties in the House and attend to the interests of my constituents. I communicate this information to you, and request that you will lay it before the House.

Very respectfully, yours,

WILLIAM STANBERRY,
Member of the House of Representatives from Ohio.

APRIL 14, 1832.

Mr. Joseph Vance, of Ohio, submitted the following resolution, which was adopted by yeas 145, nays 25, viz:

Resolved, That the Speaker do issue his warrant directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of Samuel Houston; and the same in his custody to keep, subject to the further order and direction of this House.

[An amendment submitted for the appointment of a select committee to investigate the matter seems not to have been acted on.]

On the 16th of April the Speaker announced that the Sergeant-at-Arms had reported to him that he had executed the warrant awarded

(ordered?) by the House, and issued on the 14th instant against Samuel Houston, and that he had the body of the said Houston in custody to wait the further order of the House in the premises; whereupon

Mr. John Davis, of Massachusetts, submitted a resolution, which, after debate, and several modifications, was adopted by the House, as follows:

Resolved, That Samuel Houston be brought to the bar of the House to answer the charge of having assaulted and beaten William Stanbery, a member of this House from the State of Ohio, for words spoken by said Stanbery in his place as a member of this House, in a debate upon a question depending before the House, and that he be forthwith furnished by the Clerk with a copy of the said charge as set forth in the letter of the said William Stanbery.

Samuel Houston was then brought to the bar of the House by the Sergeant-at-Arms; when

The Speaker addressed him as follows:

Samuel Houston, you have been brought before this House, by its order, to answer the charge of having assaulted and beaten William Stanbery, a member of the House of Representatives from the State of Ohio, for words spoken by him in his place as a member of the House, in debate upon a question then depending before the House. Before you are called upon to answer, in any manner, to the subject-matter of this charge, it is my duty, as the presiding officer of this House, to inform you that, if you desire the aid of counsel, the testimony of witnesses, time to prepare for your defense, or have any other request to make in relation to this subject, your request will now be received and considered by the House. If, however, you neither wish for counsel, witnesses, or further time, but are now ready to proceed to the investigation of the charge, you will state it, and the House will take order accordingly.

To which the said Samuel Houston answered as follows:

Mr. Speaker, I wish no counsel; I shall require the attendance of witnesses. Having but this moment been apprised of the course which would be pursued by the House, and believing, as I do, that this investigation is to form a precedent essentially involving the liberty of American citizens, I will claim at least twenty-four hours to prepare my response to the accusation.

He was then remanded and retired from the bar in the custody of the Sergeant-at-Arms; when,

On motion of Mr. Davis, of Massachusetts, it was

Resolved, That a committee of privileges, consisting of seven members, be appointed and instructed to report a mode of proceeding in the case of Samuel Houston, who is now in custody by virtue of an order of this House, and that said committee have leave to execute the duty assigned them immediately.

And Mr. Davis, of Massachusetts; Mr. William Drayton, of South Carolina; Mr. John W. Taylor, of New York; Mr. Henry A. Muhlenberg, of Pennsylvania; Mr. James M. Wayne, of Georgia; Mr. Clement C. Clay, of Alabama, and Mr. William W. Ellsworth, of Connecticut, were appointed the said committee.

TUESDAY, APRIL 17, 1832.

* * * * *

Mr. Davis, of Massachusetts, from the committee appointed yesterday to report a mode of proceeding in the case of Samuel Houston, who is now in custody by virtue of an order of the House, made a report recommending the adoption of the following order:

Ordered, That the following course of proceeding be observed, namely:

Said Samuel Houston shall be again placed at the bar of the House, and the letter of William Stanbery shall be read to him; after which the Speaker shall put to him the following interrogatory:

"Do you admit or deny that you assaulted and beat the said Stanbery, as he has represented in the letter which has been read, a copy of which has been delivered to you by the order of the House?"

If the said Samuel Houston admit that he did assault and beat the said Stanbery, as is in said letter represented, then the Speaker shall put to him the following interrogatory:

"Do you admit or deny that the same assault and beating were done for and on account of words spoken by said Stanbery in the House of Representatives in debate?"

If the said Samuel Houston admit the assault and beating, and that they were done for the cause aforesaid, then the House shall consider the charge made by the said Stanbery as true, and shall proceed to judgment thereon.

But if the said Samuel Houston deny the assault and beating, or that the same were done for the cause aforesaid, or refuse or evade answering the said interrogatories, then the said William Stanbery shall be examined as a witness touching the said charge; after which, the said Samuel Houston shall be allowed to introduce any competent evidence in his defense; and then any further evidence the House may direct shall also be introduced.

If parol evidence is offered, the witnesses shall be sworn by the Speaker, and be examined at the bar, unless they are Members of the House; in which case they may be examined in their places. A committee shall be appointed to examine witnesses. The questions put shall be reduced to writing (by a person to be appointed for that purpose) before the same are proposed to the witness; and the answers shall also be reduced to writing. Every question put by a Member, not of the committee, shall be reduced to writing by such Member, and be propounded to the witness by the Speaker, if not objected to; but if any question shall be objected to, or any testimony offered shall be objected to by any Member, the Member so objecting, and the accused or his counsel, shall be heard thereon; after which the question shall be decided without further debate.

When the evidence is all before the House, the said Samuel Houston shall be heard on the whole matter by himself or his counsel, as he may elect.

After the said Samuel Houston shall have been so heard, he shall be directed to withdraw; and the House shall proceed to consider the subject, and to take such order thereon as may seem just and proper.

Said Samuel Houston shall be furnished with a copy of this order.

The said report being read, the question was put, Will the House adopt the order therein recommended?

And was passed in the affirmative.

Mr. Davis of Massachusetts, Mr. Coulter, Mr. Huntington, Mr. Patton, and Mr. Beardsley were appointed the committee to examine witnesses.

And then, on motion of Mr. Davis of Massachusetts, it was

Resolved, That this House proceed to the trial of Samuel Houston to-morrow at 12 o'clock meridian.

* * * * *

The trial of Mr. Houston was then proceeded with from day to day (see Journal of April 18, 19, 20, 21, 23, 24, 25, 26, May 3, 7, 8, 9, 10, and 11, and Congressional Debates of said dates) until May 11, when the House by a unanimous vote adopted the following resolution, viz:

Resolved, That Samuel Houston has been guilty of a contempt and a violation of the privileges of this House.

The House then adopted a resolution providing

That Samuel Houston be brought to the bar of the House on Monday next at 12 o'clock, and be there reprimanded by the Speaker for the contempt and violation of the privileges of the House of which he has been guilty; and that he be then discharged from the custody of the Sergeant-at-Arms.

That order was duly executed, as appears by the following:

MONDAY, MAY 14, 1832.

* * * * *

Mr. Archer presented to the House a paper signed by Samuel Houston, and moved that the same be read; which motion being agreed to, The said paper was then read; when

Mr. Archer moved that the accused have leave to present the said

paper when he shall be placed at the bar to receive the reprimand ordered by the House for the offense of which he has been found guilty. This motion being agreed to,

Samuel Houston was then conducted to the bar of the House by the Sergeant-at-Arms, when

He presented to the House the said paper; which was again read by the Clerk, and is as follows:

To the Honorable the House of Representatives:

The accused, now at the bar of the House, asks leave, respectfully, to state:

That he understands he is now brought here to receive a reprimand from the Speaker, in execution of the sentence pronounced upon him.

Was he to submit in silence to such a sentence it might imply that he recognized the authority of the House to impose it.

He can not consent that it should be thus implied; he considered it a mode of punishment unknown to our laws; and, if not prohibited by the Constitution as an "unusual punishment," yet inconsistent with the spirit of our institutions, and unfit to be inflicted upon a free citizen.

He thinks proper to add, in making this declaration, that he has been unwilling further to trouble the House; that, although he believes the whole proceedings against him, as well as the sentence he now objects to, unwarranted by the Constitution of his country; yet, circumstances may exist to justify or excuse a citizen in determining, as he has done on this occasion, to suffer in silent patience whatever the House may think proper to enforce.

SAMUEL HOUSTON.

The Speaker then addressed the accused as follows:

Samuel Houston, you have been charged with a violation of the rights and privileges of the House of Representatives, in having offered personal violence to one of its members for words spoken in debate. In exercising the high and delicate power of ascertaining and vindicating their own privileges, the House have proceeded throughout this investigation, and in relation to your individual rights, with all that deliberation and caution which ought to characterize the dignified and moral justice of such an assembly.

You have been heard, in person, in your defense. You have been ably and eloquently defended by eminent counsel, and every facility afforded to you to place your cause fully and fairly before the House, and to urge upon its consideration matters of principle, as well as of fact, in explanation and justification of your conduct.

Whatever the motives or causes may have been which led to the act of violence committed by you, your conduct has been pronounced by the solemn judgment of the House to be a high breach of their rights and privileges, and to demand their marked disapprobation and censure.

If, in fulfilling the order of the House, I were called upon, as its presiding officer, to reprimand an individual uneducated and uninformed, it might be expected that I would endeavor, as far as I was able, to impress upon him the importance and propriety of sedulously guarding from violation the rights and privileges secured to the members of this House by our invaluable Constitution; but when addressing a citizen of your character and intelligence, and one who has himself been honored by the people with a seat in this House, it can not be necessary that I should add to the duty enjoined upon me by dwelling upon the character or consequences of the offense with which you have been charged and found guilty. Whatever has a tendency to impair the freedom of debate in this House, a freedom no less sacred than the authority of the Constitution itself, or to detract from the independence of the representatives of the people in the rightful discharge of their high functions, you are, no doubt, sensible must in the same proportion weaken and degrade not only the Legislature of the nation itself, but the character of our free institutions.

Your own mind will suggest to you, no doubt, more justifiable reflections than anything which I can say could convey; to those reflections I am prepared to trust, not doubting that had you at the time considered the act of violence which you had committed in the light in which it has been regarded by the House, you would have been spared its disapprobation and censure and I the duty of declaring to you the result of it.

I forbear to say more than to pronounce the judgment of the House, which is, that you have been guilty of a high breach of its privileges, and that you be reprimanded therefor at its bar by the Speaker; and, in obedience to the order of the House, I do reprimand you accordingly.

You will now be conducted from the bar of the House and discharged from the custody of the Sergeant-at-Arms.

Samuel Houston was then conducted from the bar and discharged from custody.

**LIBEL ON THE SENATE—CHARGES OF BRIBERY AND CORRUPTION.
UNITED STATES SENATE, MARCH 12, 1846.**

**TWENTY-NINTH CONGRESS, FIRST SESSION. GEORGE M. DALLAS, OF PENNSYLVANIA,
VICE-PRESIDENT.**

PUBLICATION IN THE DAILY TIMES, OF WASHINGTON, D. C.

This case is given for the reason that it is the first instance of punishment inflicted after the case of Duane (see *ante*, p. 7) for a libelous publication involving both the Senate, the President, and the British minister. It illustrates the length to which party newspapers of the day went in attacking and maligning their opponents.

The charge made was that "a corrupt combination had been made by the British minister (Pakenham) on the one hand with a few recreant Democratic Senators, with a majority of the Whig Senators on the other, to defeat the policy of President Polk in respect to the 'Oregon question.'" It was specifically charged that at a dinner given by the British minister, at which several Senators were present, corrupt conversations were had between said minister and Senators; that a certain meeting was held by Whig Senators in a room at the Capitol at which the British minister was present, and that a certain admission had been made by Senator John M. Clayton, of Delaware, confirming certain portions of the charges made by the Times.

The report made by Senator Benton stated that "each of these specifications was found, upon investigation, to be utterly and entirely false."

The debates and report are given entire, with the remark that the press of the day, without regard to party, agreed that so base and unfounded a calumny against the Senate deserved severe punishment. The publication, which it was understood was instigated by a member of the House of Representatives, ruined the paper.

On March 12, 1846 (first session, Twenty ninth Congress), Senator Jarnigan, of Tennessee, as a privileged question, called the attention of the Senate to certain libelous publications in the Times, a paper published in Washington, D. C., as follows:

I am aware that it is not usually necessary, expedient, or proper to pay any serious attention to the suggestions or speculations of newspaper editors. But cases may occur, and a case has occurred, that, in my humble judgment, demands a departure from that general rule. I allude to publications that have made their appearance in a paper called the Daily Times, published in the city of Washington, on the 5th, the 9th, the 10th, and the 11th of this month, making direct, specific, and positive charges of corruption against a large portion of this body. It is not my purpose to say one word harshly in reference to the editor or publisher of that paper. Neither is it my purpose to pass, in advance, upon the innocence of those thus charged, but I

may be permitted to say this: If the charge has the slightest foundation in truth, if any member of this body has so far forgot his own self-respect, or a proper respect for the dignity of the position he fills, as to be concerned in carrying on any intrigue of the nature charged against a portion of this body in the publication to which I have referred, it is high time that this country knew it. And, on the contrary, if it turn out that this charge is false and entirely unsustained by proof, I will not say what should be the punishment of those who make such a charge. In the paper of the 5th instant, the editor, after speaking of an amendment proposed by the Senator from Georgia [Mr. Colquitt,] relating to the Oregon question, and a proposition to adjourn over that had failed, says:

(The quotation, which is lengthy, appears in the report (p. 6) of the committee, made by Senator Benton, and on page — of this compilation, commencing with the sentence "At this particular crisis," etc.)

Senator Jarnagin continued as follows:

After this article appeared the Senator from Georgia [Mr. Colquitt] thought proper to denounce on this floor both it and its author. In a subsequent paper the charge was reiterated; and an article which had appeared in a Missouri paper was copied into the columns of the Times, and a suggestion was made that, if Senators thought proper to set on foot an investigation the editor and proprietor of the paper were not the only individuals who should be summoned. After the denunciation of the Senator from Georgia, and remarks which followed it from the Senator from Kentucky [Mr. Crittenden], the former charge was reiterated in words which Mr. J. would now read to the Senate.

(The quotation, which is lengthy, commencing with the sentence "We reiterate the assertion," etc., appears on pp. 10 and 11 of the report and on page 57 of this publication.)

Senator Jarnagin concluded as follows:

Now, sir, after such a serious charge made against this body, after it has been repeated again and again, and the editor and publisher tell us that we dare not investigate the matter, without saying whether there is any foundation for it or not, I have a resolution to submit, and ask the immediate action of the Senate upon it.

The resolution was as follows:

Resolved, That a committee of 5 members be appointed to inquire and report what measures, if any, are proper to vindicate the character and honor of the Senate against the charges of corruption, published in a newspaper printed in Washington City, called the Daily Times, on the 5th, 9th, 10th, and 11th instants, with power to examine witnesses and send for persons and papers.

The Senate proceeded to the consideration of the said resolution, which was debated by Senators Mangum, of North Carolina; Speight, of Mississippi; Calhoun, of South Carolina; Benton, of Missouri; Chalmers, of Mississippi; Bagley, of Alabama; and Berrien, of Georgia; as follows, viz:

Mr. MANGUM said: I have somewhat reluctantly yielded my own judgment to that of others in reference to this proceeding. I believe I have held personal intercourse with almost every Senator denominated as a Whig in this body, and upon my own part and theirs, I take occasion (differing from the honorable Senator from Tennessee) to announce in advance that no such meeting, or any meeting, either with or without the British minister, has taken place in reference to this matter, or any matter immediately or remotely pertaining thereto—I mean the resolution offered by the Senator from Georgia. I further take occasion to say in advance, so far as I am individually concerned—so far as I believe of the others—and I feel authorized to speak for every Whig Senator in this body—there is not a scintilla of foundation for either the direct charge or insinuation contained in that paper. My own impression on this subject has been constantly—till I yielded, as I said, to the judgment of others—that if the character of this Senate before the country is not strong enough to stand up against charges and insinuations not specifically made, totally unsupported by any particle of evidence, by any newspaper, however elevated or however low its character in the country, it is time that the Senate should be disbanded. If there be any individual in this body whose character is so weak, so flimsy, so little entitled to public confidence that upon general charges of the description contained in this paper he would feel it necessary to invoke a committee for their investigation, why, then, according to my instincts and first impulses, I think he had better at once leave the position which he occupies.

But although this is my distinct conviction in the case, I have yielded to the proceeding. I yield, because I understand, from a source which I regard as entitled to the highest credence, that the persons connected with this print, or at least 1 of them, has said that these allegations rested upon information derived from a member of Congress. If this were indeed so, and if it be a member of another branch of this Capitol, I have nothing to say on the subject. If it be any Senator upon this floor—but, sir, that I regard as impossible, for I feel perfectly assured that there is not a member on this floor who believes such a thing; and I will not, I can not, believe that there is a Senator on this floor who believes what his understanding repels and his honesty spurns; if, however, the reference be made to a Senator, I regard that as an additional calumny. If it referred to a member of the other House, and by any personal application to or connection with any section of the different parties here, he had got a friend to indicate that it was necessary to examine this matter, I should have at once yielded, and insisted on an examination the most severe and searching that could possibly be instituted. As it is, however, this motion having been made, I shall vote for it most cheerfully and with great pleasure. I think it is a measure due much more to the foreign functionary whose name has been mixed up with this calumny than it is due to ourselves. Whilst he is here conducting himself as a gentleman, and violating none of the decorums of his position, a common sense of the courteous hospitality due to the representative of a great people should lead to protect and defend his reputation with as much solicitude as our own. I think in this case our reputation needs no vindication. The charges will find no echo in the bosom of a single intelligent and virtuous man throughout the wide expanse of this Union. These charges involve, at one fell swoop, not only the entire Whig party of this body, but also necessarily involves very nearly half of the Senators who occupy the opposite benches; and not only that, but, by imputation of inevitable necessity, must involve, as in some way connected with this intrigue—if it be made successful in its results—the President of the United States, the Chief Magistrate of their own choice. Sir, what could be effected by any intrigue emanating from the Whig benches alone? What could the Whig members of themselves do, who constitute a minority of this body? Indeed, what could they do if they had accessions from the opposite seats of the great Democratic party of the country, unless in the Chief Magistrate of the Union the conspirators found cooperation and assistance? I shall, therefore, vote for the resolution.

Mr. SPEIGHT said that in the bill of pains and penalties, which had been framed against the Senate, there were two counts. Not only as his friend from North Carolina had very properly remarked, is the whole Whig portion of the Senate, with one or two exceptions, implicated in this charge, but also a portion of the Democratic party; and of the latter I have every reason to believe that I am one of the individuals against whom this poisoned shaft of calumny has been aimed. I feel it due, therefore, to myself, due to that constituency who have signified their confidence in me by sending me here, that I should rise in my place and most emphatically deny that I have any knowledge of any intrigue, either amongst honorable Senators of the opposite party or those with whom I have the honor to be politically associated. I have attended no caucus, with the single exception of one at the beginning of the session, when you, sir, were refused the privilege of appointing the committees of this body. As a matter of course and of necessity, we assembled together on that occasion for consultation relative to the propriety of the course to be pursued. I have been often summoned and never obeyed that summons, nor attended any caucus since that. But in reference to this transaction, I say, here in my place, that I have never attended any caucus whatever in reference to this matter. The first intimation I had of the amendment offered by the honorable Senator from Georgia was, I believe, from my friend from South Carolina. I had been delayed in getting into the Senate on the day when the amendment was offered, and I never heard it till it was read, when I made up my mind that, with the view of conciliating all parties, and securing as large a majority as possible on this great question, and anxious at the same time to follow the example of the other House, I would vote for that amendment with some slight modification. That it was the result of any caucus, I believe to be wholly unfounded; and I here, in my place, solemnly repeat that I have attended no caucus on the subject, or entered into any consultation regarding it with any individual, more than that which has taken place on occasion of my casual meeting with honorable Senators in this hall. I deem it also my duty to remark that, from the beginning, I have not regarded this as a party question. I have not regarded it as a question on which Whigs should be arrayed against Democrats, or Democrats against Whigs. I have regarded it as a great American question, by which all party lines were broken down, all party feelings and influences swallowed up. Accordingly, when I have met my Whig friends in this room, I have conversed with them freely on this great question, with an unaffected and earnest desire that all differences of opinion might be removed, so that when the hour of action comes, and we are all called upon to vote, we may be

able to present an undivided front. But that I have entered into any intrigue with the view of thwarting or influencing in any way the course of the administration, is utterly false. I need not say that I am the personal, as well as the political friend of the President; and on all questions, unless my conscience compels me to differ from him I shall yield him my sincere support. That I consider it my duty to do so; and I take this occasion, in conclusion, to say, that although I have been held up to the world as an enemy of the Executive, I mean that I have been classed with a faction of the Democratic party who are represented as united with the Whigs for the purpose of driving him from his purpose, it may turn out in the sequel of the business that I am more his friend than some of those now pointed to as his exclusive friends.

Mr. CALHOUN was understood to say that in the absence of the Senator from Georgia [Mr. Colquitt] he deemed it his duty to say that he had never seen the amendment till it was presented.

Mr. BENTON stated that nearly a month ago, in conversation with the Senator from Georgia, he had intimated his opinion that a proposition of the character of his amendment should be brought forward; consequently it was entertained by him a considerable period before this alleged conspiracy. Having said thus much as to the time when the proposition was drawn up, he would say, further, that if an accusation was made against any Senator which, in the view of such Senator, touched his character and honor, Mr. B. would, without the slightest regard to any political divisions of opinion, go for any proper investigation he might desire. But here the accusation involved not one Senator only, but many members of that body—all those who belonged to one side of the Chamber, and as many from the opposite side as might be requisite to carry any measure proposed. A member rose in his place, denied the charge in the strongest terms, and denounced its author as a slanderer; and the next day, and for days after, the charge was reiterated and investigation set at defiance. Under these circumstances, whatever Mr. B. might have thought when the charge was first broached, he should vote cheerfully for the committee proposed.

Mr. CHALMERS. I am one of those who voted against the motion of adjournment alluded to in the print to which reference has been made. I felt myself, however, so far above any liability to these insinuations that I regarded them as wholly unworthy of my notice in this place. I know nothing of any caucus since I have been a member of this body, except those of the party to which I belong, and which I have attended when requested to do so by members of the Democratic party in this House. I know nothing of any caucus of Whig members of this body, nor of any intercourse between them and the foreign minister here. In giving my vote on the question of adjournment I was guided by an anxious desire that the question of notice should be settled. My mind was made up. I am now anxious that the question should be settled. I am, as is well known, in favor of giving the notice, desiring, however, that the form of that notice should be such as will command the largest majority of this body. If any member of the Senate thinks that this charge is serious enough to demand investigation I am quite willing to award that opportunity to him, and therefore I shall give my vote in favor of the appointment of a committee.

Mr. WESCOTT said if he thought there was a single member of the Senate who could suspect, much less believe, a word of the foul charges which had been made in the Times newspaper against a portion of this body, he should feel in his heart as much ashamed of him as he did of the author of the libel. No intelligent man that he had heard of has given the slightest credit to these charges. Surely no Senator on this floor could suppose they had the slightest foundation in truth. Mr. W. had voted against the adjournment alluded to in the Times; yet he did not suppose himself implicated in the charges. It might, however, not be improper for him to state—and he could appeal to the Senator from Mississippi (Mr. Speight), to his colleague (Mr. Yulee), to the Senator from Alabama, now absent from illness (Mr. Lewis), and other Senators to sustain his assertion—that he did not consent to vote against the adjournment till the moment before the vote was taken; and when he so voted it was with the avowed intention of voting against the amendment of the Senator from Georgia (Mr. Colquitt). He never had any idea of voting for it, as is well known to many Senators on both sides of the Chamber. He was for the whole of Oregon, and from the first had been strongly inclined to vote against the “notice” in any of the forms yet proposed. He had been all the time, and was yet, for doing nothing in the matter.

As it respects the present resolution he had intended on yesterday and the two days previous to have proposed a proceeding in relation to these scurrilous articles in the Times, but had been dissuaded from doing so by the gentlemen on both sides of the Chamber (and particularly by several Democratic Senators not accused in these articles), on the ground that it was unnecessary. He thought such course was due to the Senators slandered, and that it was most becoming that it should be proposed by a Democratic Senator; and he would have done it at all events, but for

a suggestion that the Presiding Officer of the Senate had the power to exclude the editor and reporters of that paper from the galleries, and that it would be exercised. He thought the proper course was to send the libel to the prosecuting law officer of the District for his action. He should, however, vote for the resolution of investigation; not because he deemed it at all necessary to vindicate the character of the Senate or any individual member of the Senate from such attacks, but in the hope and expectation that public justice might be done to those who had thus defamed this body in this infamous manner.

Mr. BAGBY. I have only a few remarks to offer. I agree with the Senator from North Carolina (Mr. Mangum) that this procedure was not necessary, and, resting upon the fixed and established character of the Senate, I would, had I been consulted relative to the propriety of offering the motion, have given the same advice which he offered. I do not believe, I cannot be made to believe, that the Senate of the United States has reached that day when it is necessary, by a process of investigation, to defend itself against assaults of that character. That day has not yet come, and I console myself with the fixed and abiding hope that the day will never come. If, however, honorable gentlemen on the other side of the Chamber consider it due to themselves, and to the distinguished functionary of another government, to whom the Senator from North Carolina had alluded, to constitute this inquiry, I agree not only to open the doors, but to throw them wide open. Not a word of the charges has any truth as applied to me, nor have they, I believe, as applied to others. I heard of no caucus, no intrigue, nor do I believe in the existence of any intrigue nor the meeting of any caucus. In giving my vote on the motion to adjourn I was actuated by the conviction that it was premature to vote on the question at that time, and not for the purpose of preventing any intrigue. I shall vote for this resolution, under the impression that it is a little letting down on the part of the U. S. Senate to take notice of the publication. It is the first time since I have been here that such a course has been taken, and I trust in my Maker it may be the last.

Mr. BERRIEN. The remark made by the Senator from Alabama (Mr. Bagby) that if gentlemen on this side of the Chamber feel it due to themselves to institute this investigation, induces me to desire that I may not be misunderstood in voting for this resolution. I shall not do so under the influence of any such consideration as that represented by the honorable Senator. I shall give my vote for the resolution before you, not from the belief that it is at all necessary to the vindication of the character of any member of this Senate, either on this or the other side of the Chamber. I can not believe that any man whose opinions ought to influence the action of the Senate dare avow—communing with his God and his own conscience—the slightest belief of aught that is contained in these representations. Therefore, I do not vote for this resolution in the belief that it is necessary to the vindication of any Senator, but because I doubt whether it is not the right of the constituencies represented by this body to have the investigation which has been challenged by these calumniators, and because I believe that, in the course of this investigation, we may be presented with a fit opportunity of rebuking that licentiousness of the press which is too prominently exhibited at the present day. This is the consideration which will influence me in voting for the resolution, abjuring as I do, at the same time, the idea that it can be necessary to the vindication of any member of this body.

Mr. BAGBY. The Senator will allow me to say that that remark to which he has alluded was made in no unkind spirit, but simply because the Senators on the other side were the majority of those assailed.

Mr. BERRIEN. I am perfectly satisfied. I am sure the remark was not made unkindly or disrespectfully.

The motion was then put on the adoption of the resolution, and the same was unanimously agreed to, and, on motion unanimously agreed to, the presiding officer was authorized to appoint the said committee. The President of the Senate thereupon announced the following as the special committee under said resolution, viz: Messrs. Jarnagin, of Tennessee; Benton, of Missouri; Dickinson, of New York; John M. Clayton, of Delaware, and Turney, of Tennessee.

On March 16, 1846, Mr. Benton submitted the report of the committee, which is herewith given in full, as follows, viz:

Senate Report No. 222, Twenty-ninth Congress, first session.

IN SENATE OF THE UNITED STATES.

MARCH 16, 1846.—Read, concurred in, and ordered to be printed.

MARCH 17, 1846.—Ordered, that 5,000 copies, in addition to the usual number, be printed for the use of the Senate.

Mr. BENTON made the following report:

The committee appointed to inquire and report what measures, if any, are proper to vindicate the character and honor of the Senate against the charges of corruption published in a newspaper printed in Washington city, called the "Daily Times," on the 5th, 9th, 10th, and 11th instant, with power to examine witnesses, and to send for persons and papers, report:

That, in entering upon the execution of their duties as prescribed in the order of their appointment, the committee believed that their researches were to be directed to the truth of the charges of corruption made in said paper with a view to the conduct of the Senate and its members, and not with the view of arraigning or punishing the authors of the publication. Under this sense of their duties, the committee summoned before them the editor of the Daily Times newspaper (Mr. H. H. Robinson), and the publisher (Mr. J. E. Dow), as witnesses, who, of their own knowledge, or by giving the names of others, might be able to prove the alleged corruptions; and the committee declined to act upon intimations that others besides the editor and publisher might be found to be connected with the authorship of these publications. The inquiry, in this way, avoided all aspect of a proceeding against the authors of the publications, and became wholly directed to the character of the Senate as a component part of our republican institutions, and which cannot be impaired or destroyed without great injury to those institutions.

To avoid calling persons unnecessarily and improperly before them, the committee requested the editor and the publisher of the paper to state, in writing, the facts they expected to prove by each witness, which was done; and the statements thus made being copied into the minutes of the proceedings, became a justification for summoning each witness, and also a guide to his examination, and gave the editor and the publisher the benefit of directing the inquiry to the points which they deemed material.

Under the general imputation against Senators, of corrupt communications with the British minister in relation to the settlement of the Oregon question, the articles published in the Times contained three specifications of a character sufficiently definite to admit of specific inquiry; and to the truth of these specifications the researches of the committee were chiefly directed. These specifications were: 1. A dinner, or entertainment, at the British minister's, at which many Senators were said to be present, and where corrupt conversations in relation to the Oregon question were supposed to have been held. 2. A meeting of Whig members, in a room at the Capitol, on the Friday before the sailing of the steamer Cambria, at which the British minister was charged to be present, and where it was said to be agreed to have a vote taken, to be sent off to Great Britain by the return of that steamer.

3. An admission, by Mr. Senator John M. Clayton, that he was present at the British minister's table when the strength of the British Oregon party in the Senate, as it was styled, "*was counted by their noses.*"

Each of these specifications was found, upon investigation, to be utterly and entirely false.

1. With respect to the dinner at the British minister's, and the alleged corrupt conversations there, the editor and the publisher of the Times paper each declared, on oath, that he had no personal knowledge of any such dinner or conversation. The two persons named by them as witnesses having "*a knowledge*" of the dinner, or entertainment, and of the conversation there held—namely, Messrs. Samuel Medary and L. C. Turner—swore positively that they had no "*knowledge*" of any such dinner, conversation, or entertainment. There remained, then, no persons for further examination on this head, but the Senators charged with being present at the supposed dinner; and the editor and publisher of the paper having each refused to say that he expected to prove by any member of the Senate any conversations with the British minister of the character mentioned in the publications, and having, on the contrary, sworn that they did not expect to prove any such conversations by said Senators, it appeared to the committee that there was no foundation for calling the said Senators, or any of them, to testify; but it was deemed proper to make known to the Senators, whose names had been given in as witnesses, the facts in relation to the use made of their names, that they might act in relation to it as they thought proper. They were informed accordingly; and the Senators, so informed, each for himself, promptly sent in sworn statements utterly contradicting all that was imputed to him. These statements, with the other evidence, were entered on the minutes of the committee's proceedings, and leave no doubt on the minds of the committee that the whole story in relation to the dinner, and the alleged corrupt conversations, is a false and contemptible libel.

2. In relation to the meeting of the Whig Senators in the Capitol, and the closeting of the British minister with them on the Friday before the sailing of the Cambria, and the alleged resolve then taken to have an immediate vote on the Oregon question to send out by the Cambria, the committee, after full and careful inquiry, find the whole story to be unfounded and untrue; that there was no meeting of such Senators on that day; that the British minister was never at such a meeting on any day; that there was a meeting a day or two before the day charged, at which the sense of the meeting in relation to the Oregon question was precisely the contrary of the resolve imputed to it in the publications, being in favor of a delay of the debate for two weeks, instead of hurrying a vote to be carried out by the Cambria. These facts are proved by Whig members present at the actual meeting; and further, that, in conformity with this resolve to postpone the debate, a Senator at the meeting (Mr. Dayton) was appointed to move the postponement in the Senate, and did so; and only withdrew his motion after debate and opposition. And thus this story of a Whig meeting in the Capitol, attended by the British minister, is proved to be an absurd fabrication.

3. With respect to the "*nose counting*" at the British minister's table, the whole story has had a termination so ridiculous and contemptible that the committee find it difficult to speak of it in the temperate language which becomes a report to the Senate. State papers seem to descend from their dignity when compelled to notice things so despicable, false, and vulgar. Justice, however, to the character of our insti-

tutions requires it to be done, and the committee will discharge their duty in the fewest possible words.

Publications in the Times newspaper had charged this species of counting the (so called) strength of the British on the Oregon question in the Senate of the United States, and the British minister's table was made the place of the enumeration. On the first day of the meeting of the committee, the editor of the Times (Mr. H. H. Robinson) wrote down in the presence of the committee that he expected to prove by Mr. E. B. Schnabel, of Philadelphia, that Mr. J. M. Clayton, a member of the committee, then present, had admitted that he was present at the British minister's table when this "*counting by noses*" took place. Mr. Clayton instantly demanded the production of the witness. Fortunately Mr. Schnabel, contrary to his intention expressed the evening before in the presence of the editor of the Times, had not returned that morning to Philadelphia, and quickly appeared before the committee. On seeing what was written down as expected to be proved by him, he manifested perfect amazement; declared that he could not sustain Mr. Robinson; that he was totally ignorant of everything attributed to him; that he had never seen Mr. Robinson until the night before, when he casually met him at the room of a member of Congress; that he had asked him what proofs he had to carry before the Senate committee to justify his charges, and talked with him about some of the rumors in circulation; and that all that was attributed to him was false and unfounded. Mr. Schnabel expressed his extreme mortification at being called as a witness in such a case, and spoke like a man of honor whose sensibilities were wounded at finding himself in such an unpleasant situation.

The next morning a communication was received from Mr. Robinson, which he desired to have entered on the minutes of the proceedings as a correction of his previous reference to Mr. Schnabel, declaring it to have been an "*inadvertence*," and that Messrs. Medary and Turner were the persons intended to be named. Soon after, Mr. Schnabel himself appeared, and asked to add to his testimony of the previous day what had occurred since his examination on yesterday, which was that he had met Mr. Robinson that morning, who had acknowledged his mistake, retracted what he had imputed to Mr. Schnabel, and promised to have his retraxit made known to the committee. The additional statements of each were entered upon the minutes of the proceedings, and the inquiry considered finished, the committee seeing no reason to examine Messrs. Medary and Turner, who had previously sworn that they had no knowledge of anything that had ever been said or done at the British minister's table. But Mr. Clayton desiring it, these witnesses were recalled, and examined to that point, and both fully declared that they knew nothing of any dinner at the British minister's, or any conversations there, or any admissions of any kind from Mr. Clayton, and that they had never spoken to or conversed with him in their lives, and had given Mr. Robinson no information on the subject.

Thus terminated the examination into the only tangible specifications under the general charge of corruption against Senators contained in the publications in the Times newspaper of the dates referred to. The examination terminated in the total overthrow of those charges; and however unfounded and unworthy of notice they have been shown to be, the committee believe a service has been rendered to the institutions of our country, and to the decencies and hospitality of private life, in exposing them to the contempt they merit.

The committee confine themselves, in this report, to the results established by the testimony, in which they unanimously concur. The testimony itself is set out in the minutes of the proceedings; and the committee have to say that all the witnesses summoned before them testified readily and frankly, except one (a Mr. G. T. M. Davis), who had acknowledged himself to be the writer of the extract of a letter copied into the Daily Times from the Missouri Republican, and charging corruption and British collusion on Senators and Representatives. After naming a Senator as being alluded to in the charge, and admitting that he had no personal knowledge of its truth, he refused to go on with his testimony unless allowed to repeat the hearsay of some person whom he refused to name, and who also refused to sign his own deposition as written down by himself, and in which no error was suggested. This individual was notified to attend this day, that the Senate, if it saw fit, might take some order with respect to him; but the committee propose nothing, believing that the vindication of the Senator named from the charge against him, and all the ends of justice, will be fully accomplished by the publication of the accuser's own testimony, as far as it went.

In conclusion, the committee have to remark that the editor of the Times (Mr. H. H. Robinson) declared that he was the writer of all the articles referred to in his paper, except the quoted extract from the Missouri Republican, and that he has no personal knowledge of the truth of anything he wrote in the said articles.

In execution of that part of their duty, under the Senate's order, which required the committee to report what "*measures*" are proper for the vindication of the honor and character of the Senate, they believe it to be sufficient, in this case, to recommend the printing of this report, and of all the testimony taken by the committee; and that the editor and the publishers of the Times (Mr. H. H. Robinson and Mr. J. E. Dow) and their reporters be excluded from the gallery of the Senate reporters.

A JOURNAL OF THE AUTHORITY AND PROCEEDINGS OF THE INVESTIGATING COMMITTEE.

IN THE SENATE OF THE UNITED STATES, *March 12, 1846.*

On motion by Mr. Jarnagin, of Tennessee, it was resolved as follows:

That a committee of five members be appointed to inquire and report what measures, if any, are proper to vindicate the character and honor of the Senate against the charges of corruption published in a newspaper printed in Washington City, called the "Daily Times," on the 5th, 9th, 10th, and 11th instant, with power to examine witnesses, and send for persons and papers.

And Mr. Jarnagin, Mr. Benton, Mr. Dickinson, Mr. John M. Clayton, and Mr. Turney were appointed accordingly.

At the same time the following proceeding was had, to wit:

IN THE SENATE OF THE UNITED STATES, *March 12, 1846.*

On motion by Mr. Jarnagin,

Resolved, That the select committee this day appointed to investigate certain charges made in the Daily Times, printed in this city, against a portion of the United States Senate be, and are hereby, authorized to employ a competent clerk, to be paid out of the contingent fund of the Senate.

The committee named in the above resolution met at the Capitol, in Washington, on the 13th of March, 1846. Present: Mr. Jarnagin, chairman, Mr. Benton, Mr. Dickinson, Mr. John M. Clayton, and Mr. Turney.

Resolved, That William B. Webb be appointed clerk to this committee. (He entered upon the duties of his appointment.)

The chairman laid before the committee the following charges of corruption, published in a newspaper printed in Washington City, called the "Daily Times," on the

5th, 9th, 10th, and 11th instant, of which paper H. H. Robinson appears to be editor and Jesse E. Dow publisher, each published under the editorial head, to wit:

MARCH 5, 1846.

While the people of the United States, gratified with the fulfilment of their wishes in the passage of the resolutions of "notice" by the House, have for weeks reposed in perfect security, flattering themselves, in the midst of their various occupations and pursuits of life, that the action of the lower branch would in good time be responded to favorably by the upper, a system of intrigue has been progressing in the seat of government between the two phases of Oregon opponents, which but few have been aware of, and which, if known to the *people*, would excite a tempest of indignation and arouse public feeling to an immense pitch of excitement.

A deliberate game has been played through the secret intrigues of a caucus, in which a perfect understanding was had between a few anti-Oregon Democrats and the Whig portion of the Senate, with some *Western* members for an exception, to compel the administration into a compromise with Great Britain, by defeating the House notice, as it came to the Senate, and substituting for it a conditional one, in which the responsibility of *giving notice* was to be conferred upon the President, but with this *discretionary* power-binding him by a specific clause of further "negotiation," which should result in the settlement of the dispute by "*compromise*." In other and clearer words the understanding is to pass the resolutions of Mr. Colquitt, of Georgia, which are as follows:

Resolved, That notice be given, in terms of the treaty, for abrogating the convention made between Great Britain and the United States on the twentieth of October, eighteen hundred and eighteen, and continued by the convention of eighteen hundred and twenty-seven, immediately after the close of the present Congress, unless the President, in his discretion, shall consider it expedient to defer it to a later period.

Resolved, That it is earnestly desired that the long-standing controversy settling limits in the Oregon Territory be speedily settled by negotiation and compromise, in order to tranquillize the public mind and to preserve the friendly relations of the two countries.

This substitute for the resolutions of the House, which, while they instructed the President to give notice, without specifying the time in which he should act, but which action was intended to be without delay, and at the same time, while admitting the question to further *negotiation*, emphatically, by the circumstances of their adoption, forbade *compromise*, and instructed the administration *against* it. This substitute, we say, was the bantling of a secret intrigue, was to be passed through the Senate with as little delay as could be avoided, and, with the speed of locomotives and British steamers, was to be despatched to the Lords and Commons of England as an earnest of the pacific policy of the people of the United States, and their *avowed intention*, by the use of the "*compromise*" phase, to concede to the British power a portion of territory which the American Executive had proclaimed to the world was ours by a title "clear and unquestionable," and to which the mover of the substitute himself had said the claim of the United States was the strongest.

At that particular crisis it did not succeed. They who were pledged to it did not all stand up to their committal, and, instead of being despatched to the care of the British steamer at Boston, then just ready to embark, an adjournment delayed it to a future day. Since then a more complete understanding has been effected. *Caucus* meetings have been held; the principle of action laid down; *votes counted*; and the success of the resolutions, in anticipation of final action, confidently counted on. But, what is more astonishing, and showing how false-hearted some of our American Senators are, while seemingly contending for the interests of their country and the welfare of its people—how *traitorous* they dare be in secret collusions with our hereditary enemy; all these intrigues to force the administration into compromise; all these plots to abandon our native soil; these bargains to disgrace the American nation, and of their substance fill the maw of the rapacious British lion, were canvassed and arranged at the British minister's own table, within the lapse of a few days, where a meeting for this specific and express purpose was had, attended by all the *loyal advocates of the British claim*, who are comprised in the *Whig* ranks of the Senate, with, as we said above, a few exceptions from the West, of men who could not in their hearts become the plotters of treason against their country.

On this occasion, disgraceful to the name of *Republican*, which one party to this dinner-table compact assume, the whole strength of the *compromise party* was counted and ascertained; their firmness in the crisis was pledged for, and Minister Pakenham, the representative of the British Government, put in possession of all "*Her Majesty's*" party strength within the walls of the *American Senate*!

Can the American *people* be made to realize this most infamous fact, that the British minister, instructed by his Government to intimidate, intrigue, or bribe the

American people out of a territory to which that power has no title, and have never pretended to assert one, can surround himself in secret conclave, the doors guarded and the loopholes closed to provide against betrayal, with a body of *American Senators* with whom he can counsel on what will be the effectual means to accomplish the infamy of the American Government, and who are alien enough in heart to commit themselves to his measures of success! Can the American masses realize this humiliating fact? We know that, situated as they are, far beyond the pestilence of this political atmosphere, and ignorant of the utter bankruptcy in patriotism of some of their representatives, they are slow to believe that American Senators can be found so thoroughly lost to duty, to country, and to self as to enlist as the partisans of a foreign enemy in its diversified intrigues and corruptions against their own Government. Is it not, therefore, time that they should be alarmed; that they should know how *treason* stalks through our streets and Capitol; how Constitution is to be rode down by perjury, and national honor immolated upon the altar of British feeling and interest!

We call upon our Republican masses to awaken to this conviction, and we appeal to the *press* to sound the warning note. What we here have exposed will, in its important part, soon be acted out. The vote in the Senate we have *foreshadowed*; the plot is matured; the treason will soon stand forth in its naked infamy, unless some power, stronger in influence than any yet introduced—almost more than mortal—interposes to save the British confederates in the Senate from the deep damnation of the act!

We know that in some quarters we shall subject ourselves to denunciation for this indignant exposure; but that denunciation will be most impotent, compared with the avalanche of scorn and contumely that will fall upon the recreant Senators who perpetrate this dishonor of their country. Devoted to the principles and measures of this administration, we can do no less than warn the friends who elevated it to power, and who now repose not only hope but confidence in its strength to consummate the great ends of its election, against the imminent dangers that now surround and speedily threaten to engulf it. We say to the *Democracy of the States*, your administration is at this moment *in greater peril than ever before*. This is the crisis of its fate. If this combination between the *British minister*, as one party, and a few recreant Democratic Senators, joined with a majority of the Whig Senators, succeeds in its settled plot, the *administration* will be driven from its mission, its policy will be defeated, its strength prostrated, confusion will reign triumphant, President Polk will be left without a party, and British rapacity will feed upon American treachery. Let the Democracy look well, then, to the evil days that are upon them, and to the evil end that is impending. Look to the Senate!"

MARCH 9, 1846.

We were not aware when we wrote and published our article of last Thursday, denouncing the coalition between certain Whig Senators, a few Democrats, and the British minister to defeat the House resolutions of notice, that we were throwing into the community such a bombshell of confusion and excitement as we have since discovered it to be. As we have been threatened with an investigating committee, probably it will be well for those interested to hunt up the writer of the following article, which we extract from the St. Louis Republican of the 26th February, dated at this city on the 14th. The Republican, it is needless for us to say, is the great Whig paper of the West:

"During this Oregon controversy there have been some scenes enacted here which I regard as disgraceful to us as a nation, and highly discreditable to those connected with it. It is this: Certain members of both branches of Congress have been in the habit of holding confidential communications with Mr. Pakenham, the British minister, in relation to the Oregon territory. They are in the habit of frequently speaking to others of the views of Great Britain, as well as of Mr. Pakenham, as to the policy our American Congress is pursuing. To me, such a course looks as humiliating as it is disreputable. It is purely an American question—one of right to American soil; rights, too, which Great Britain is striving to wrest from us, not by the strong arm of force, but by compromise and negotiation. Under such circumstances, no Representative of the people or Senator in Congress can, and discharge his duty faithfully to his constituents and his country, hold consultation with the accredited agent of that foreign power who is attempting to deprive the United States of her rights. Those persons to whom I allude sympathize with the British claims, and act more as the representatives of Mr. Pakenham and Great Britain than they do of their own country. The eyes of a jealous people are upon them; their motives will be fearlessly canvassed, and their conduct unceremoniously exposed. If they can not represent, *conscientiously*, the American side of the question

they should resign their places and go home. I may, in a short time have something to communicate to you on this subject that will astonish you."

Whatever may be the result of this matter (we write previous to the meeting of the Senate), we will say we have nothing to take back; but must repeat, in view of what we know has taken place, look to the Senate.

MARCH 10, 1846.

The Reverend Senator Colquitt, of Georgia, forgetting his position as a public man and his character as a divine, indifferent to the respect of his fellow-Senators, and reckless of his own, rose in his place on Monday and called the attention of the Senate to an article which appeared in this paper on Thursday last, intended by us to warn the country against the danger which threatened the settlement of the Oregon question, through a collusion which had taken place between certain Senators and the British minister to substitute a *compromise* for the resolutions of unconditional notice that came from the House. For a pretty accurate sketch of the Senator's remarks, we refer the reader to the appropriate head in this paper, which we have taken from the Union in preference to our own report.

The Senator from Georgia is probably the only man that ever enjoyed a seat in the Senate of the United States since the organization of the Government who, in his qualities and habits, so intimately and inseparably blended the pious professions of the divine and the arrogant pretensions of a weak statesman with the reckless and grovelling nature of the ingrained traducer. For the first we leave him to his conscience, that may not be quite seared; for the second to the public, who appreciate his imbecility; for the last to the contempt of all, who can not but see that in all his several relations of public life, he is out of native character, and is only following the impulses of his nature when asserting the province of a *drivelling vilifier*.

We cannot obtain our own consent to a reply to the *clerical gentleman* in the same language and spirit of his assault. While his was an ebullition of malignity and vulgar defamation wholly personal, and tenfold more degrading to the Senator as a man and the Senate as a body than it was injurious to ourself, our reply shall be of a general character, and in the spirit and manner dictated by our self-respect, as well as demanded of us by the gravity of the subject and the seriousness of the charges first made. We have no taste to enter the arena with a knight so practised in the debased mind's craven weapons, for we could expect in *such* a contest, with *such* a well-trained and well-armed antagonist, no possibility of escape from vanquishment. We shall endeavor to show the Senator, too, that, while his course has sunk and debased *him*; that while the Senate was mortified at his self-disgrace, the galleries filled with a dense crowd, who pitied and loathed in turn his imbecile disregard of self and place and occasion; while his impotent failure to justify himself has since been the common subject of free discussion and unreserved and universal condemnation in the social circle, the drawing room, and on the side walks; while not one of his brother Senators, save Mr. Crittenden, could suffer himself to divide with the clerical gentleman the contempt which he then was earning, and which he since received, and Mr. Crittenden only so far as to endorse a confession of Mr. Colquitt, and that a confession, by the way, of *one of our charges*; while several of his personal and attached friends have since sought opportunity to excuse him and plead charity for him against the current of popular contempt that every where assails him; while, we say, all of these evidences of condemnation of his malignant and unchaste philippic stand forth in public, *we* can well afford, even if it were not our choice from taste and regard for public respect, to pass his bitter and vilifying personalities all over, and treat the whole matter as one belonging to the public and not to our private self. And we will here say to Mr. C. that we are not ambitious of distinction or notoriety, especially such notoriety as he has earned for himself. We have a duty to perform, and we profess to have the requisite independence and courage for the responsible task, even if we should make an enemy in the Senate Chamber, and be denounced on its floor as a "scoundrel" and a "liar" by one who, in a spiritual capacity, each seventh day, ascends to the teacher's seat in God's holy temple to preach "peace and good-will," charity and forgiveness, sobriety and moderation, piety and forbearance.

It may seem strange to the reader, especially the distant one from this scene, that Mr. Colquitt should be the man to make the defence of the implicated Senators against our imputations, especially when he is charged with the less grave offences; the furnishing of a substitute which should unite the Whig vote with the anti-Oregon Democrats and with being *a party to a collusion* with *Whigs* to defeat the administration measure of the House and force the Executive into compromise. Here Mr. C. is appreciated in becoming the champion of the arraigned Senators. In the first place *he is the TOOL and CATS-PAW of those who were more guilty than himself*. He was selected because the *Whigs* desired it to be a Democratic "family quarrel,"

and while they expected to be vindicated, they also anticipated a little profit from the result of that "family quarrel." Moreover, as the charges were grave, as the community universally believed them, from what there was visible even to the naked eye in this city; and as they were calculated to create some indignation abroad against the intriguants of the Capitol, it was necessary that a denunciation of them should arrest the prejudice of both political and *religious* feelings; and therefore was the *reverend* Senator Colquitt deliberately made the *tool* of those who were more cunning and more guilty, yet more scrupulous of truth than his clerical self.

He is emphatic in denying that *he*, among other Senators, was present at the *British minister's table* where the compromise, &c., was canvassed, &c. We made no such charge against that Senator, we made no such charge against any Senator on the Democratic side; but we alluded solely to "the advocates of the British claim who are comprised in the *Whig* ranks of the Senate, with a few exceptions from the West," in which latter we mentally included Mr. Crittenden. After the treachery of Mr. Colquitt's wing or tail of the Oregon opponents in failing to support Mr. Dayton's proposition before it was offered, neither the British minister, nor the Whigs whom he had around his table, would trust the *reverend* gentleman in their dinner-table confidence. And we will here point out how plainly, in denying for himself what we have not charged, he has acted out the duty and deserves again the application of a *tool*. If he intends, while denying that *he* was at this dinner-table intrigue, to be interpreted as meaning that no such meeting was had then we flatly say to the *reverend* Senator that he is a worse *tool* than we had given him credit for; he is the *tool* of those who desired a bold *falsehood* to be uttered, but who had too much self-pride or too little courage to utter it themselves. *And such a TOOL!*

We reiterate the assertion that, at a British dinner, given by the British minister, attended only by British Whigs, this British compromise was the subject of debate; and we have said above why the clerical Senator was not present; he will do for the "*cats-paw*" of those men; but they eat their "chestnuts" in secret!

It is also in like character with this particular denial that he has treated the other several charges of our article. In his fury of denunciation he has shown, in every line, ignorance of the most flagrant character; and, in attempting to exculpate the criminality of others, by wholesale denial of the application to *himself*, he has most shamefully earned throughout the just epithet of weak-headed, hollow-hearted *tool*, and for his willingness to become their vulgar defender most certainly deserved a more charitable aid than that which *pity* and *apology* are this day extending to him.

We were told on every hand, subsequently to the publication of Thursday's paper, and down to Monday morning, that such was the excitement and feeling of the members of Congress and private citizens, growing out of our charges, that an *investigation* would be instituted; that the matter could not be passed over; that the treachery must be exposed, if the charges were true. When we wrote and published we made public what many observing men in this city knew, and we were ready to stand by our exposure. But *investigation* was out of the question; investigation would do to threaten, but it would be ruin to act on. The actors in certain scenes knew this. They dared not subject their intrigues with the British minister and his more immediate British confederates to the dissection and nakedness of a public examination. They talked this all over. *They held a caucus on Sunday night*—(was the *reverend* Mr. Colquitt not there?)—and there the whole matter was debated. The chances of exposure outweighed the chances of self-vindication; and the result was a determination on the part of the wings not to act—not to speak—not to notice the subject. *But was not the reverend Mr. Colquitt the supple TOOL of this Sunday night meeting?* and while they escaped exposure by investigation, has not *he* earned double disgrace by becoming their billingsgate instrument—the escapement of their spleen?

What we charged, then, against the anti-Oregon *Democrats*, who, in the Senate, were coalescing with the principal portion of the Whigs to defeat the House "notice," and force the question to a compromise settlement, we charged with a perfect knowledge of the *fact*. We repeat the charge now—that by Mr. Colquitt's wing this overture has been made, in different shapes and at various periods; and this we reiterate in the teeth of the Senator from Georgia, even at the risk of encountering "*scoundrel*" and "*liar*" on his *reverend* lips, whence but lately proceeded, while he stood in the cushioned temple of his Almighty Master, covered with "the livery of the court of heaven," "*blessed are the peacemakers!*"—"let your conversation be yea, yea, and nay, nay." And our motive, then, in making this exposé was what it is now in reiterating it: *to direct the attention of the people of the United States to the false faith of Senators*, who, knowing what the voice of their constituents was—how the President had been elected on the question; how the Democratic party had triumphed on it; how Congress had pledged to its specific settlement—were bargaining to defeat the *public will*. Can Mr. Colquitt deny this without meriting the application of his own choice epithets? And if he cannot, as we know he cannot, then

we ask him *piously* to reflect whether, in his own language, *he* is not "a man who could have had no particle or remnant of conscience, patriotism, or virtue within him?"

We well understand the general intention of Mr. Colquitt's vulgar and ridiculous assault. It is not to vindicate himself. It is to divert the attention of the people from an act little better than treason to the realm, already planned when we first denounced it, in which he was but an insignificant party, and which now, although greatly hazarded by the indignant tone of public feeling which we have aroused against the plot and the plotters, is not abandoned, but may succeed, if there is hope left to escape the blistering infamy that the people will visit upon the intriguants. All of the Senator's speech manifests guilt, partly in his own self, partly on his party wing, mostly upon those Whigs with whom they have intrigued. Some of this guilt he has confessed; the remainder, which dare not be submitted to investigation, time will develop or hide, since they who were most guilty in this instance were content to be silent, suffering their conduct to be vindicated by a *tool* who was ignorant of their full criminality with the British minister.

And now, in summing up this matter, we will here take occasion to say, that, although Mr. Colquitt denies having been at but one *caucus*, he takes good care not to deny that other and many *caucuses* have been held. Does he not know his "COMPROMISE" has been submitted to *caucus* among the Whig Senators? Does he dare deny that *compromise*, in every shape, has been tried in *Whig caucus*? Does he deny that the different propositions of compromise have all in turn been submitted to the judgment of the *British minister*? Does he not know that prominent *Whig Senators* are in constant intercourse with the *British minister*, and that of a private and most suspicious character? Does he dare deny that some of *his* wing of the Oregon opponents have been for weeks attempting to perfect an intrigue with the *Whigs* to defeat the administration and force it upon a policy foreign from that publicly proclaimed by the Executive? All this he should know is true; and yet, with the malignity of a fiend, rather than the sobriety of a clergyman; with the vulgarity of a groundling, rather than the refinement of a gentleman; with the weakness of an idiot, rather than the wisdom and sagacity of a Senator, he proceeds to denounce, as a liar, a scoundrel, a tool, &c., &c., through a vocabulary of billingsgate which a fish-woman could only equal, the writer who has proclaimed what he partly in his own case should have known, and what others knew, was a true exposure.

We now leave the reverend personage to the comfortings of his own pious and charitable heart. If he has achieved any honors by this controversy, we do not envy him their wearing. He is welcome to all the fame he has won. We will not dispute with him the "notoriety" he has secured. The freshness of his new greatness "will outlive the brass of monument or tomb." To his constituents, whom he has disgraced, and to the American people, whom he has shamed, we leave the reverend Mr. Colquitt, with all his honors thick upon him.

The whole turn of this subject from a public to a personal character will show the people the necessity of our warning—look to the Senate!

MARCH 11, 1846.

We have no disposition to strike a *weak man*, already prostrated; it would not be magnanimous; and, while we would lose our own respect, we would suffer the imputation of craven from the community; therefore, so far as Mr. Colquitt's vulgar assault was *personal*, we will pass it over, content with what we have said in defence of what, most unfortunately for him, provoked his grovelling malignity. He has found that he is not too exalted to be *taught*; and if he has lost the respect due from others to his station and his professions, and if he has sunk in his own esteem, *he has himself only to blame*—we wash our hands of his fall.

Mr. Crittenden was well selected as a special pleader for the Georgia Senator, and his argument was special enough. He pronounced our charges "without the slightest foundation in truth"—that is, so far as *he* knew, he would have the public infer. But he relied, immediately following, upon Mr. Colquitt's denial. He said:

"However this might be, the whole publication was *here openly* denounced as utterly false throughout, as having no earthly ground on which to rest, and nothing whatever to warrant or excuse it."

That is, Mr. Colquitt had "here openly denounced," &c. How far that Senator was capable of denouncing charges as false, which he knew nothing about, we will leave to the judgment of the reader who saw our reply yesterday, while we proceed to inquire why no *Whig Senator* followed Mr. Crittenden? Mr. C. could deny, because he was among the "exceptions of men from the West"—he was one who had stood back, and, as we are reliably informed, would not be a party to the compromises which Mr. Colquitt's wing were approaching the *Whigs* with. *But he cannot deny the caucus intrigues of his party associates.*

There were more than one other *Whig Senator* on that floor, whom Mr. Colquitt might, with like safety, have called upon—who were among the "exceptions of men from the West"—and although they might have most emphatically, as far as their

knowledge extended, have denied the charges, yet could not have said they were ignorant of caucus intrigues.

But our principal intention in recurring to this matter is to make remark upon the following sentiment from Mr. Crittenden:

"Mr. C. had had the honor of being for a long time connected with this body, and he had been personally acquainted with almost all its members for the last twelve years, and he believed he might with truth say that its reputation for patriotism was as pure and unsullied as that of any political body on the face of the globe. He felt that the Senate had earned for itself a reputation in this respect which was not easily to be shaken. He believed it to be well founded, and doubted not that it would be fully maintained."

We would be the last man to say aught against the "reputation for patriotism" having the remotest tendency to create unmerited distrust. Although the Senate of the United States might be, and is, as "unsullied as any political body on the face of the globe," yet, in times past, there were acts perpetrated which did shake its reputation, and, in the minds of the people, most powerfully impeach the *patriotism* of some of its illustrious members. *The censure of Gen. Jackson* both impeached the patriotism and made infamous the names of the malignant perpetrators. That act will stand in history through all time to condemn the "*patriotism*" of the Senate, as it was then constituted. The *Maine boundary treaty* was itself, under all the circumstances, a condemnation of the "*patriotism*" of this body, whose "reputation was not easily to be shaken;" because American Senators, with their eyes open, the maps before them, the facts all known, were carefully advised that, in perfecting the treaty, they were ceding to a monarchy, and that our hereditary enemy, a portion of a sovereign State. This was "*patriotism*!"

While we would not distrust the Senate without cause, yet we have learned enough of the past to be watchful *at the present*. Especially, too, should we be distrustful, when we hear men, day after day, advocating on its floor the unfounded claims of the British monarchy to a portion of our republican soil, and in the face of title, right of every description, the voice of the people, and the proclamations of the Executive, striving to confirm that Government in its possession and ownership. This is "*patriotism*!" This the people can see and hear, but they must not assail the honesty or doubt the patriotism of the *Senate*!

When we see men high in place—American Senators—become *British* partisans, and, while degrading their own Government and people, eulogize and uphold that of *Britain*, we cannot admit that it is a part of our duty as a free citizen of a free republic to call them *patriots*, and direct from them that censure and odium which their conduct merits. It is the duty of the American people to watch closely the deportment of their servants. There should be nothing in the character of an *American* Senate forbidding the people to hold to strict accountability its members before the bar of public opinion; and although we trust, with the Senator of Kentucky, that the exalted "reputation" and the "unsullied patriotism" of that body may be "fully maintained," yet we are not one of those who believe that a *Senator*, like a king, "can do no wrong." Arnold was trusted within an hour of his treachery. Burr was loved while he was perfecting treason against the Republic that had nursed him. Hull was not doubted while he was waiting to surrender his forces to the enemy. It must not be called treason to *look to the Senate*, while a portion of Oregon is ready for the grasp of the British lion. These are times of *doubt*!

Resolved, That Jesse E. Dow and H. H. Robinson be summoned to appear forthwith before the committee.

A summons was issued, and said witnesses appeared.

JESSE E. DOW made the following statement, in writing, to-wit:

I expect to prove by Lieutenant Porter, of the United States Navy, that he saw Mr. Pakenham, the British minister, come to the Capitol in a private hack at or about 9 a. m. on the Friday before the sailing of the steamer Cambria from Boston; that he saw him enter a room in the Capitol, where certain Whig Senators were present; and that he ascertained from a doorkeeper that a caucus was held that morning by the Whigs, and that the British minister was present.

JESSE E. DOW.

I expect to prove by G. T. M. Davis, the reporter of the St. Louis Republican, the charges made by him in the St. Louis Republican of the 26th of February, 1846, as copied into our paper of the 9th of March, 1846.

JESSE E. DOW.

I also expect to prove by Dr. J. H. Relfe, member of the House, that Lieutenant Porter said the same to him that he said to me.

J. E. DOW.

I expect to prove that the British minister and members of the Senate and House of Representatives had consultations, in private, in relation to the Oregon question, by the editor of the Newark Daily Advertiser; and I wish to have him summoned to bring his file for February, and any letters he received from his reporter of the House or Senate during that month, confidential or otherwise.

J. E. Dow.

Mr. H. H. ROBINSON made the following statement, in writing, to wit:

I expect to prove by the testimony of Colonel Samuel Medary and Mr. L. C. Turner, of Ohio, that they have knowledge of a dinner or entertainment having been given by the British minister, at which certain United States Senators were present, and on which occasion the Oregon question was the subject of conversation.

I expect to prove, by the testimony of the persons mentioned by Mr. J. E. Dow, the several circumstances therein detailed.

I expect to prove, by the testimony of Messrs. Mangum, Archer, Berrien, J. M. Clayton, Corwin, Dayton, Davis, Evans, Johnson, of Maryland, Simmons, and Webster, that secret caucuses of the Whig Senators were, at different times, held, at which the compromise of the Oregon dispute was debated in several various shapes.

I expect to prove by these enumerated Senators, that propositions were made to a portion or all of them to compromise the question, by Messrs. Calhoun, Colquitt, McDuffie, Haywood, Bagby, or by either of them.

I expect to prove by Mr. John M. Clayton that he was present at the entertainment of the British minister, and that the Oregon question was the subject of conversation.

And I expect to prove by the testimony of Mr. Schnabel, of Philadelphia, that he admitted that, on the occasion of this entertainment, the "noses were counted," meaning that the strength of the company was ascertained, or sought to be ascertained, on the Oregon question, or on the *compromise* of the question.

I expect to prove by Mr. Jarnagin, that he was present at a caucus of the Whig members, at which the Oregon discussion was of such a character that he became disgusted and left before the adjournment.

I expect to prove by Judge Atchison, of the Senate, that Mr. Jarnagin told him that he was present at the above specified caucus, and left for the reasons stated.

H. H. ROBINSON.

Lieutenant PORTER, of the United States Navy, was then summoned as a witness and attended, who, after being duly sworn, gave the following deposition, to wit:

First interrogatory. Did you ever inform Jesse E. Dow that there was at any time a caucus held in the Capitol, at which Mr. Pakenham, the British minister, was present?

Answer by witness. In a conversation with Mr. Jesse E. Dow, I told him that I had heard from one of the messengers of the Senate that there was a meeting of some of the Senators at the Capitol. I also stated that I met Mr. Pakenham in the rotundo on that morning. Not knowing of my own knowledge that a meeting had taken place, I could not have stated as the question propounds. Nor do I know that Mr. Pakenham was at a meeting or in any meeting at the Capitol or elsewhere.

Mr. Jones was the messenger who informed me that a meeting was held at the Capitol. I was not informed by any of the messengers at the Capitol that Mr. Pakenham was at a meeting at the Capitol.

Second interrogatory. Do you know, or were you informed, how Mr. Pakenham came to the Capitol on the day you have named—whether in his own carriage, or in a private or public hack?

Answer by witness. I do not.

Third interrogatory. Did you ever say to Jesse E. Dow that you saw Mr. Pakenham, the British minister, come to the Capitol in a private hack at or about 9 o'clock, a. m.?

Answer by witness. I never said to Jesse E. Dow that I saw the British minister come to the Capitol in a hack or private carriage; but I said to Mr. Dow it was my impression that the British minister must have gone to the Capitol in a hack, as I did not see his carriage at the west front of the Capitol, but a hack instead.

Fourth interrogatory. In the conversation you had with Jesse E. Dow, did you say, or intimate to him, that there had been any consultation or correspondence between the Senators, or any of them, and the British minister, about the Oregon question?

Answer by the witness. I do not know that any of the Senators, or Mr. Pakenham, had a conversation on the Oregon question or any other question. I only know the British minister by sight, and a few of the Senators. I therefore answer the question in the negative. I stated to Mr. Dow the British Government pursued three methods of gaining their points: one was by diplomacy; the other, by their gold; the

third, war. That the British minister had been brought up in a good school in Mexico, and that he had the example of a Jugurtha in bribing the Roman senate. I also stated, from my knowledge of the English character, I believed they thought us as base as themselves.

Fifth interrogatory. Was this conversation in reference to the presence of Mr. Pakenham at the Capitol at the time you have stated?

Answer by witness. It was.

Sixth interrogatory. Did you mean to be understood that Mr. Pakenham was attempting to bribe the Senate, or any member of it, or that any Senator was in conference with him on that subject?

Answer by witness. I merely intended to convey the impression that Mr. Pakenham, being the British minister, he would use every effort to benefit his country, and that he would leave no stone unturned to gain his object; but I did not mean to convey the idea that he had bribed any of the Senators. Having read the statement of Mr. Dow, I have to state that so much of it as relates to Mr. Pakenham being in the Capitol on the Friday previous to the sailing of the Cambria and that portion which relates to my being informed that some of the Senators who are Whigs meeting in caucus, is true; but so much of it as relates to the British minister entering a room in the Capitol, I know nothing about.

W. D. PORTER.

ELLIS B. SCHNABEL, Esq., of the city of Philadelphia, being summoned, appeared; and, being duly sworn, gave the following deposition, to wit:

First interrogatory. Did you ever hear any Senator say that he had attended a dinner at the British minister's, at which the Oregon question or compromise question was discussed or spoken of?

Answer by witness. No; never. Being shown Mr. Robinson's statement, I have to say I can not sustain Mr. Robinson in his statements. I am totally ignorant of every circumstance connected with this alleged caucus or dinner party; also ignorant in reference to any statements alleged to have been made by Senator Clayton; and his (Robinson's) statement that I could prove anything, even the most trifling circumstance in reference to this matter, is utterly false and unfounded. I met Mr. Robinson last night for the first time in my life, in the room of the Hon. Isaac Parish, member from Ohio, when the conversation turned upon the investigation to be made by the Senate committee. I inquired of Mr. Robinson what his proofs were in support of his various charges. I stated that I had heard all the rumors, both in his paper and such as circulated in the crowd. I did not tell him who told me the rumors, but I am free to confess that Lieutenant Porter told me of the rumors, although I did not inform Robinson that he was the man, from the fact that Mr. Porter requested me not to speak of this thing, as it might make unnecessary trouble. I am deeply mortified that Mr. Robinson should mention my name to this committee, inasmuch as he knows as well as myself that I have no information other than that possessed by every individual who reads his paper, and walks the avenue with his ears open to the many idle rumors afloat.

ELLIS B. SCHNABEL.

The committee then adjourned till to-morrow at 10 o'clock a. m.

MARCH 14, 1846.

The committee met pursuant to adjournment. Present: Messrs. Jarnagin, chairman; Benton, Dickinson, J. M. Clayton, and Turney.

Mr. SAMUEL MEDARY, who had been summoned as a witness, appeared; and after being duly sworn, deposed as follows, to wit:

First interrogatory. Have you any knowledge of a dinner or entertainment having been given by the British minister, at which certain United States Senators were present? If so, state which of the Senators, and what was said on the Oregon question, if anything.

Answer by witness. Nothing of my own knowledge.

S. MEDARY.

Mr. LEVI C. TURNER, who had been summoned as a witness, appeared; and after being duly sworn, deposed as follows, to wit:

First interrogatory. Have you any knowledge of a dinner or entertainment having been given by the British minister, at which certain United States Senators were present? If so, state which of the Senators, and what was said on the Oregon question, if any thing.

Answer by witness. I have no knowledge of any dinner or other entertainment given by the British minister at which any United States Senator was present.

L. C. TURNER.

CHARLES S. JONES, who had been summoned as a witness, appeared; and after being duly sworn, deposed as follows, to wit:

First interrogatory. Was any caucus held in any chamber or part of the Capitol on Friday, the 27th of February last, either by Whig Senators or any other Senators?

Answer by witness. I have no knowledge or recollection of any such caucus being held on that day.

Second interrogatory. Was Mr. Pakenham, the British minister, within the walls of the Capitol that day?

Answer by witness. He (Mr. Pakenham) was not. I did not see him on that day, nor did I hear anybody say they saw him in the Capitol on that day. I am one of the messengers of the Senate. There is no other messenger of my name.

Third interrogatory. Did you ever see Mr. Pakenham, the British minister, go into or attend any caucus of Whig Senators or Democratic Senators, or any Senators?

Answer by witness. Never, never.

Fourth interrogatory. Did you ever tell any person that Mr. Pakenham attended a Senatorial caucus on Friday, the 27th of February last, or at any other time?

Answer by witness. Never, never.

CHARLES S. JONES.

At this time, Mr. H. H. Robinson appeared before the committee and asked permission to withdraw the written statement made by him on yesterday, as to what he expected to prove by Mr. Schnabel. It will be observed this was after said witness had given his testimony, and now Mr. Robinson says he was mistaken in referring to that witness. He says he saw the witness last night, after he gave his testimony. Mr. Robinson was then asked if he could now give the name of any person by whom he could prove the charges made in his paper, other than those already furnished by him, and he said he could not.

Here the committee received from Lieutenant William D. Porter the following letter, to wit:

WASHINGTON, *March 14, 1846.*

GENTLEMEN: I have to state that in all my conversations with Mr. J. E. Dow, it was some days after his publication in the Times, which publication was then a public matter of remark and conversation; therefore, he could not have predicated any part of that publication upon any remarks made by me to him. My information in relation to a "Whig caucus" in the Capitol was from other people, and my attention was drawn towards it by one of the messengers or doorkeepers in the Capitol, by my hearing him remark, "I have a summons for some of my party to attend a caucus." This, messenger, I have since been informed, was Mr. Anderson.

As my conversation with Mr. Dow was after his publication, I most respectfully enter this as my *protest* against the whole, or any part or portion of my evidence before the committee being used as corroborative of the statements in the Times. I will also state that I meant no disrespect to the "British minister," when I stated he had the "example of a Jugurtha;" nor did I mean to cast reflections on the Senate, or any Senator; on the contrary, among those of *all parties* with whom I have had the pleasure to become acquainted, I am happy to rank them among my warmest friends, and hold them in the highest estimation. I therefore respectfully beg permission to be allowed to have erased from the records of the committee my evidence of yesterday, and this statement substituted; that evidence, the committee will at once perceive, could not hold good in a common court of law, as it is only hearsay; and the committee can have better evidence in bringing before them both Messrs. Anderson and Jones. But, if the committee decides that my evidence must stand on its records, I only enter this *protest* against its being used as corroborating Mr. Dow's statement in the Times.

I have the honor to be, gentlemen, your most obedient servant,

W. D. PORTER,
Lieut., U. S. N.

While the committee had this letter under consideration, they received from Mr. H. H. Robinson the following letter, to wit:

WASHINGTON, *Saturday, 11 o'clock a. m.*

SIR: This morning I called your attention to an inadvertence which I committed in my specifications yesterday morning, and desired the privilege of making the proper correction. I did not intend to be understood as specifying Mr. Schnabel as a witness by whom I expected to prove what was not contained in the publications which this call of inquiry is predicated on. I intended to specify the rumor of there having been an entertainment at the British minister's, attended by Senators, at which the strength of the party was said to have been ascertained on the Oregon question, and to name Messrs. Turner and Medary as persons who could testify that

such a circumstance was of common rumor previous to the publications. Before mentioning Mr. Schnabel's name in connection with the rumored admission of Mr. Clayton, which is not in and is foreign from the publications, I verbally informed the committee that he told me he had heard it from a person whose name he was not at liberty to use; and such should have been my statement in writing at the time.

This correction, due to myself, to Mr. Schnabel, and your committee, as well as to Mr. Clayton, I now desire to make at this stage of the proceedings, and I have therefore to request and most respectfully insist that this copy shall be made a matter of record.

I am, most respectfully,

H. H. ROBINSON.

Hon. Mr. JARNAGIN.

And also the following communication from Mr. Jesse E. Dow, to wit:

WASHINGTON, *March 13, 1846.*

The undersigned, publisher of the Washington Times, agreeably to a subpoena of this committee, appeared before it on yesterday to give such evidence as he possessed in relation to the charges made against certain Senators. When the undersigned appeared, as the committee will recollect, he stated that he was not the editor of the Times, nor had he the power to exercise any control over its political columns, so long as its editor was a Democrat, and supported no particular aspirant for the Presidential chair; that he never saw the first editorial published in said paper until after it was in print; that he knew not that it was going to be written or published, and that he was as much startled at its contents as the community around. The undersigned then informed the committee that, since the editorial of the 5th instant was published, he had heard various rumors and statements from individuals, which he had communicated to the editor, and that in justice to himself and the editor he declared it to be his duty to give to the committee the names of his informants, that they might be examined in relation to the matters contained in the editorials that followed the first editorial complained of. This is the substance of what the undersigned said, or intended to say, in relation to the matters then under consideration. In doing this, the undersigned did not wish to be considered as a common informer, without the privilege of defence, nor will he act in such a character.

From the resolution of the Senate appointing the committee, it would seem that the Times is on trial instead of the Senate, and that the committee are to report "what measures, if any, are proper to vindicate the character of the Senate against the charges," etc.

As the joint proprietor and publisher of the Times, the undersigned most respectfully denies the right of the Senate to try him or his paper; nor will he appear before the committee in any other light than that of a witness to testify to such facts as may have come to his knowledge touching the matter under consideration.

The undersigned, on yesterday, without proper consideration, being brought before this committee prior to the appearance of the editor, gave to this committee certain papers, in which the undersigned stated that he "expected to prove," by certain individuals, certain facts therein stated. The undersigned now wishes to amend those papers so as to make them read, "I have been informed," instead of "I expect to prove." It is for the undersigned, as he conceives, only necessary to prove to the committee that he had respectable information to justify him in relating to Mr. Robinson, the editor, the statements made to him after the publication of the article in the Times of the 5th instant, and then to leave the committee to call these informants before them, and ascertain, if they see fit, what they know, under oath, touching the character and honor of the Senate, which the undersigned has never impeached or impugned.

The undersigned most respectfully requests the committee to have this paper inserted upon the minutes, that he may stand fair before the Senate and the country. In so doing the undersigned declares that he intends not to affirm or deny any charge made by the editor of the Times, or to prejudice him, in any manner, before the committee.

JESSE E. DOW.

And also the following communication from Mr. H. H. Robinson, to wit:

WASHINGTON, *Saturday, 3:30 p. m.*

SIR: I most solemnly protest against the proceedings of the committee over which you preside, in conducting the inquiry into publications made in the Daily Times, of which I am editor, and for the following reasons:

1st. Because your proceedings have been secret and ex parte.

2d. Because, although standing before the community in the proceedings of the Senate as one implicated, I have not been allowed the privilege which I requested

in the early stage of the proceedings, of being present during the examination of witnesses, to interrogate or suggest such questions as might develop the whole truth.

3d. Because the facts, circumstances, and incidents which produced those publications were of such character that the whole truth in my justification, could not be elicited by any secret and ex parte examination of witnesses.

I respectfully request that this paper be made a matter of record in your journal.

I have the honor to be, &c.,

H. H. ROBINSON.

Hon. Mr. JARNAGIN,

Chairman of the Committee of Inquiry.

Resolved, That the request of Mr. H. H. Robinson, for leave to withdraw the written statement submitted by him on yesterday, cannot be granted, as several of the witnesses referred to therein had been examined before his application.

Resolved, That the communications received from Lieutenant Porter, J. E. Dow, and H. H. Robinson, be taken as a part of their evidence, and go upon the journal of the committee.

GEORGE T. M. DAVIS, who had been summoned as a witness, appeared; and, after having been duly sworn, deposed as follows, to wit:

First interrogatory. Do you know the writer or author of the letter to the Missouri Republican, of date of the 14th of February, 1846, quoted in the "Daily Times" of this city, as here shown to you?

Answer by witness. I do. I wrote the letter to the Missouri Republican, from which the extract was taken, published in the Times.

Second interrogatory. Have you made the further communication to that paper, as intimated in the last paragraph of the quoted letter?

Answer by witness. Not that I now recollect.

Third interrogatory. Will you state the names of the Senators in Congress intended by you in that letter?

Answer by witness. I alluded to the Hon. Daniel Webster.

Fourth interrogatory. Do you know anything, of your own knowledge, which authorized you to allude to that gentleman in the terms which you used?

Answer by witness. The information upon which I relied was derived from others, and from circumstances that transpired previous to my making the statements; but I know nothing of my own personal knowledge, upon which the extract alluded to was based.

Fifth interrogatory. Did you give any information of the character contained in your letter, from which the extract is taken, to the editor of the Times before the publication of the articles in that paper, in support of which the extract is quoted?

Answer by witness. I did not give any information whatever, either to the editor or publisher of the Times, as to the character or purport of my letter, either before or after the publication of their articles. The first time I ever spoke to Dow was the day after his first article, at which time I was introduced to him by Mr. Upton, of this city. Robinson, the editor, I never saw to know him until to day, and since my examination was commenced before this honorable committee. I was introduced to him a few moments since by Mr. Dow.

Sixth interrogatory. Can you give the committee the names of any persons who can prove upon any Senator the matters contained in the extract of your letter to the Missouri Republican?

Answer by witness. I cannot do so without a breach of confidence. I based the statement upon certain statements made to me by a third person, and which, in my opinion, justified my writing the letter I did. I cannot, therefore, give the name.

Seventh interrogatory. Do you, or do you not, refuse to give the name of any person for your authority in alluding to Senators in the language used in your letter to the Missouri Republican?

Answer by witness. I do refuse, for the reason above stated, and for no other reason whatever.

[Here the committee closed the examination of this witness, and he refused to sign his deposition because the committee would not permit him to relate his hearsay of facts and circumstances communicated to him by other persons whose names he would not give; which hearsay of facts and circumstances, he said, in his opinion, fully justified the letter he had written to the Missouri Republican.]

Mr. ELLIS B. SCHNABEL, who had been examined as a witness on yesterday, asked permission to make an addition to his former statement, which was permitted, and he made the following, to wit:

I never told Mr. Robinson that I knew a man who had heard Mr. Clayton make any statement in reference to the meeting at the British minister's. I told Robinson that I had heard the rumor, but from whom I did not say. The gentleman

(Lieutenant Porter) who informed me, and whose name I did not give to Robinson, also had the matter as hearsay; and my knowledge, in every respect, is nothing more than is known by every man in Washington, and dates back to the first publication in the Times, to which my attention was called by the Vice-President; and further, Mr. Robinson met me this morning, and acknowledged that his first statement to the committee in reference to myself was all a mistake; that he intended to mention Messrs. Medary and Turner as his proof, not me; that he did not know me until long after the publication in the Times, which rendered it impossible that I could have been his source of information. He made a literal retraction of his statements regarding myself, and said that he would make the correction before the committee. I had made an arrangement, or rather concluded to leave for Philadelphia on the evening I met these gentlemen at Mr. Parish's room; but subsequent circumstances induced to make another disposition of my intention and remain a week longer. I can not say that Mr. Robinson had knowledge of my intention to leave Washington, although a gentleman present had made inquiry of me whether I would go, and at what time. I then and there agreed with him to leave Washington; but a certain time was not determined upon.

ELLIS B. SCHNABEL.

H. H. ROBINSON, editor of the Times, having been summoned, appeared; and, after being duly sworn, deposed as follows, to wit:

First interrogatory. Are you the writer of the articles published in the Times on the 5th, 9th, 10th, and 11th instant, making charges against Senators of the United States?

Answer by witness. I am; with the exception of the article quoted from the St. Louis Republican.

Second interrogatory. Were either of said articles, or any part of either, founded upon any thing within your own personal knowledge?

Answer by witness. No.

Third interrogatory. Can you now give to the committee the name of any person or persons, other than those you have already furnished, upon whose authority any fact is charged in either of said articles?

Answer by witness. No.

Fourth interrogatory. Do you expect to prove by Col. Samuel Medary, Mr. L. C. Turner, Messrs. Mangum, Archer, Berrien, J. M. Clayton, Corwin, Dayton, Davis, Evans, Johnson of Maryland, Simmons, and Webster, or either of them, conversations at the British minister's table of the character stated in said articles?

Answer by witness. No.

H. H. ROBINSON.

JESSE E. DOW, publisher of the Times, having been summoned as a witness, appeared; and, after being duly sworn, deposed as follows, to wit:

First interrogatory. Were either of the articles published in the Times (the subject now under consideration), or any part of either, founded upon anything within your personal knowledge?

Answer by witness. No.

Second interrogatory. Can you now give to the committee the name of any person or persons, other than those you have already furnished, upon whose authority any fact is charged in either of said articles?

Answer by witness. No.

Third interrogatory. Do you expect to prove by the editor of the Newark Advertiser any corrupt or improper conference or association between the British minister and a member of the Senate on the Oregon question?

Answer by witness. I do not expect to prove corruption; but I expect to prove that Mr. Webster was the Senator upon whose authority the correspondent of that paper based his letter, and that he is the person whose name was given to the editor by said correspondent, and alluded to in said letter.

Fourth interrogatory. What reason have you for such expectation?

Answer by witness. I have been informed so by Mr. G. T. M. Davis.

Fifth interrogatory. Have you not had conversation with Mr. Davis since he was before this committee, and did you or not encourage him in the course he thought proper to take before the committee?

Answer by witness. I said to him, upon his representation of the case, that he would be made the greatest man in the country; that he was illegally arrested and confined, in my opinion; that he should demand to be heard at the bar of the Senate; and, if injustice had been done him, he would have a fair hearing, or words to that effect.

Sixth interrogatory. When was it Mr. Davis gave you the information stated in your answer to the 4th interrogatory—was it before or after the publications in the Times, out of which this investigation has grown?

Answer by witness. I think it was on the day I first appeared before the committee.

Seventh interrogatory. Was your conversation with Lieutenant Porter, of the Navy, in relation to the supposed meeting in the Capitol, before or after the publication in the Times in relation to that meeting?

Answer by witness. My conversation with Lieutenant Porter was after I had ascertained from Dr. Relfe the substance of his statement, and after the publication. My conversation with Dr. Relfe was the day after the first article appeared, and that conversation I immediately reported to Mr. Robinson. Dr. Relfe was the first person who gave me the information.

JESSE E. DOW.

The committee then adjourned to meet again on Monday morning, at 9 o'clock, a. m.

MONDAY, *March 16, 1846.*

The committee met pursuant to adjournment.

Present: Messrs. Jarnagin, chairman, Benton, Dickinson, J. M. Clayton, and Turney.

SAMUEL MEDARY, a witness heretofore examined, was called back; and on his further examination, deposed as follows, to wit:

Second interrogatory. Did you ever hear any such Senator say anything about such a dinner, or admit that any conversation had taken place at any such dinner?

Answer by witness. I never heard a Senator say anything on the subject. I also state that I never saw Mr. Clayton to know him until I saw him on committee; and, also, that I never spoke to Mr. Robinson of Mr. Clayton.

S. MEDARY.

LEVI C. TURNER, a witness heretofore examined, was called back; and on his further examination, deposed as follows, to wit:

Second interrogatory. Did you ever hear any such Senator say anything about any such dinner, or admit that any conversation had taken place at any such dinner?

Answer by witness. I never did; and I would further state that I never had any conversation with Senator Clayton before the appointment of this committee, and was personally unknown to him; that I never informed or intimated to Mr. Robinson that I had any knowledge or information of a dinner at the British minister's, where United States Senators were present; that the first intimation I had on that subject was in the article in the Times; that I never mentioned the name of Senator Clayton to Mr. Robinson or any one as connected with this subject; and that my name was given to the committee without my knowledge, or any intimation from any source.

L. C. TURNER.

WM. L. DAYTON, a Senator from New Jersey, referred to as a witness by Mr. Robinson, editor of the Times newspaper, deposed as follows, to wit:

That he has no knowledge of any fact, matter, or thing which can directly or indirectly prove or sustain the charges against Senators now under investigation; that, so far as he knows, or has heard, or has reason to believe, the entire publication tending to impeach the conduct of Senators is untrue. And he further saith, that the last Whig caucus or consultation of which he has knowledge was, as he thinks, on Tuesday, the 24th of February last; that it was then and there suggested that the most prudent course of proceeding, under all the circumstances, was to postpone for the present the further consideration of the Oregon question; that, in conformity with that suggestion, he, the witness, was requested to move said postponement for the space of four weeks, and with that understanding the meeting broke up; that he, the said witness, afterwards, upon further advisement, resolved to limit the motion to postpone to two weeks instead of four, under the impression that thereby said motion would command more votes; that neither at said meeting, nor at any other meeting, so far as he knows, was there any understanding or agreement to sustain the resolution of Mr. Colquitt, of Georgia, which was offered after said motion to postpone was withdrawn; that the opposition of Mr. Calhoun satisfied the witness that the motion to postpone would not receive the support necessary to its passage, and it was therefore withdrawn. The witness further says he knows of no such dinner at the British minister's as is referred to; that he knows of no such consultation with the British minister by Whigs as is referred to; that he knows of no caucus at which the British minister attended or at which anybody did attend but Whig Senators; that he knows of no caucus on Sunday night last, such as is referred to; that he knows of no caucus or consultation on this subject, the object or intent of which was to embarrass the administration; that, so far as he had knowledge, the Whigs of the Senate have viewed this question as a national, and not as a party question.

WM. L. DAYTON.

The Hon. SPENCER JARNAGIN, who has been referred to by Mr. Robinson as a witness, after being duly sworn, deposeth as follows, to wit:

I regret Mr. Robinson has thought proper to present me as the witness by whom he expects to prove anything tending to sustain the charges he has made against certain members of the Senate. I have no knowledge of any fact or circumstance which will in the slightest degree support the charges against Senators published in the Times, nor have I any idea of what is expected to be proved by me further than what I learn from the statement made by Mr. Robinson. He says he expects to prove by me that I was present at a caucus of Whig members, at which the Oregon discussion was of such a character that I became disgusted, and left before the adjournment. If such be his expectation, he has certainly given credit to information upon which no reliance should have been placed. Since I have had the honor of a seat in the Senate, I have attended many consultations of Whig Senators. Such meetings have been common among the Whigs, and, I believe, with the Democrats, and I can not tell to what meeting Mr. Robinson refers. The last meeting or caucus I attended was held in the Capitol on the morning of the 24th of February, 1846. This is the only one of which I have any knowledge at which there was any discussion upon the Oregon question. On the morning the Hon. John M. Clayton was to make his Oregon speech there was an informal meeting for the purpose of prevailing on Mr. Clayton not to discuss the respective rights of England and the United States to the Oregon territory, and the request was made of him. The meeting to which I have referred, held on the 24th of February last, was called, as I understood it, for the purpose of comparing opinions upon the subject of the notice to be given to England, so as to present the largest vote possible for the notice, if passed. It was soon discovered that this question did not partake of a party character, and that each Senator present seemed disposed to act upon his own high responsibility and sense of duty, without regard to party considerations; and the result of the meeting was, that Senator Dayton should move that the matter be postponed for thirty days, which was subsequently changed to two weeks, to give time to Senators to well mature their own opinions. On the 24th Mr. Dayton did not get an opportunity to make his motion, but on the next day (the 25th) he made it; it was opposed by Mr. Calhoun, and withdrawn by Mr. Dayton. Mr. Colquitt then offered his resolution, and Mr. Crittenden moved to postpone to the next day, and that the amendment be printed, which was agreed to. I never considered this meeting, or the proceedings thereof, any secret, and often spoke of them, and stated I should attend no more meetings on the subject, believing they would be of no use. This is the last caucus by the Whigs of which I have any knowledge. I have not even heard of any caucus by the Whigs, or by any number of them, since the one I have referred to, held on the 24th of February last. I will take occasion here to say, I have no knowledge of any meeting by the Whigs at any time for the purpose of embarrassing the administration or defeating the President's recommendations. I know of no conference nor conversation with the British minister by any Senator at any time on the subject of Oregon. I know Mr. Pakenham never attended any meeting at which I was present. I never heard of his presence at any caucus at any time held by any party.

SPENCER JARNAGIN.

The Hon. D. R. ATCHISON, who had been referred to by Mr. Robinson as a witness, after being duly sworn, deposed as follows, to wit:

Mr. Jarnagin and myself had a conversation together in relation to the probable action of the Senate upon the various propositions to give the notice to annul and abrogate the treaty of 1827 between the United States and Great Britain in relation to the country west of the Stony mountains. In the course of the conversation, I told Mr. Jarnagin that the Democratic members of the Senate, or a portion of them, had, upon several occasions, met in caucus to determine, if possible, what form of resolution should be sustained by them, but that we could come to no agreement. Mr. Jarnagin told me that he had met in caucus with the Whig members of the Senate, the object being to ascertain what course it was expedient for them to pursue in relation to the same subject. That it was soon found that they could not agree, and that he withdrew from the caucus. This, I think, was the substance of all that was said upon that subject. I never held, to my knowledge, any conversation with the editor of the Times, or any person connected with that paper, in relation to the Oregon question. Indeed, I can not say whether I have had even a passing acquaintance with Mr. Robinson, the editor of the Times. I can not say that I would know him, or that I ever had seen him.

D. R. ATCHISON.

The Hon. DANIEL WEBSTER, who had been referred to by Mr. Robinson as a witness, after being duly sworn, deposed as follows, to wit:

I know of no meeting of Whig members of the Senate at the Capitol on any Sunday, and no meeting at any time at which the British minister was present, or any-

body else but Whig Senators. I know of no meeting of Whig Senators at the house of the British minister at any time. I know of no conference between the Whigs of the Senate and the British minister at any time. I know of no meetings of Whig Senators at any time holden, or called for any purpose, of embarrassing the administration. A meeting of Whig Senators was holden before Mr. Colquitt's proposition was offered, in which it was considered what course the public interest required them to pursue in regard to the question pending in the Senate respecting Oregon. I was called out before the gentlemen separated, but understood the general sentiment was in favor of a postponement, for some weeks, of the pending measure, if such postponement could be carried. At the time of this meeting I knew nothing of Mr. Colquitt's intention to present any proposition to the Senate, nor was any conversation had on that subject at the meeting. I know nothing of any letter to the Newark Daily Advertiser, or the contents thereof. I have, of course, conversed with different Senators on different sides of the House, at various times, on the proper mode of proceeding in regard to the question of notice. I never had any conference or consultation with the British minister on that subject, either with or without the presence of any other individual.

DANIEL WEBSTER.

The Hon. JOHN MCPHERSON BERRIEN, who had been referred to by Mr. Robinson as a witness, after being duly sworn, deposed as follows, to wit:

I am ignorant of any meeting of Whig Senators in relation to the Oregon question, other than those which I will hereafter state, having been held at any time at the Capitol, at the house of the British minister, or anywhere else; or of any such meeting at which Mr. Pakenham, or any other than a Whig Senator, was present. Being referred to the statement of H. H. Robinson, that he expects to prove by me, among others, "that secret caucuses of the Whig Senators were at different times held, at which the compromise of the Oregon dispute was debated in several various shapes;" that propositions were made to a portion, or all of them (the Senators enumerated by him), by Messrs. Calhoun, Colquitt, McDuffie, Haywood, Bagby, or by either of them—I have to say that I can give no such testimony; that I know no such facts; and that, so far as my knowledge or belief extends, the statement is entirely and absolutely false. The meetings of Whig Senators to which I have referred above were held at the Capitol on two several mornings, immediately before the meeting of the Senate—the first, as I believe, on the 12th February last, at which the only question considered was the propriety of Mr. John M. Clayton's entering into the debate at the time, and resulted in an agreement to recommend to him, if he did so, not to discuss the question of title. The second was held on the 24th of February last; and the only question then considered was the propriety of moving, in the Senate, a postponement of the resolutions in relation to Oregon for four weeks or thirty days, which Mr. Dayton was instructed to make, and did make on the following day, reducing the time to two weeks. I add, that Mr. Colquitt's resolution was never, at any time, considered at any meeting of Whig Senators, within my knowledge, and that I was ignorant of the terms of that resolution until it was presented to the Senate.

JNO. MCPHERSON BERRIEN.

The Hon. WILLIE P. MANGUM, who had been referred to by Mr. Robinson as a witness, after being duly sworn, deposed as follows, to wit:

Willie P. Mangum, one of the Senators from North Carolina, having been referred to by H. H. Robinson as a witness to prove "that secret caucuses of the Whig Senators were at different times held, at which the compromise of the Oregon dispute was debated in several various shapes," deposeth and saith: That he has no knowledge of any such meeting or meetings; that he knows of no meeting or caucus in which the merits of the Oregon question, or any resolution relating to it, has been discussed; that no proposition or resolution on the Whig side of the Senate, touching the merits, has been the result of any caucus agreement or suggestion; that nothing in regard to the Oregon question has been considered, within his knowledge, except at two meetings. At the first, on the day the Hon. J. M. Clayton spoke, the Whigs met to consult whether he (Mr. C.) should not be requested not to speak on the subject; or, in case he did, that he should be urged not to discuss the title. The result of that consultation was to request Mr. Clayton not to discuss the title to Oregon. The second, I believe the 24th of February, 1846, was to consider of the mode of treating the question as to time, which resulted in instructing Mr. Dayton to move a postponement of action for thirty days. Upon informal consultation afterwards, Mr. Dayton moved the postponement for a fortnight, which motion was withdrawn before a vote was had on it. I know of no meeting or caucus of the Whig Senators at which Mr. Pakenham, or any other than a Whig Senator, was present. I know of no meeting, caucus, or consultation among many or few of the Whigs which had for its object to embarrass the President in the adjustment of the controversy with Great Britain, or to open, directly or indirectly, any consultation

with Mr. Pakenham, or any other or others, on his behalf. I know of no meeting in which Mr. Colquitt's proposed amendment was considered by the Whigs. I know of no meeting since Mr. Colquitt introduced his proposition, nor did I know what it was likely to be, further than as he indicated publicly on the floor of the Senate. I know of no agreement of the Whigs, as a body, touching the Oregon question, except as above stated, in respect to the instructions to Mr. Dayton, nor do I know of anything occurring in those consultations that I regarded as necessary to keep secret. I know of no meeting at the British minister's residence at which the Oregon question, or anything relating to it, was, or was to be, discussed, nor do I believe that any such ever occurred.

WILLIE P. MANGUM.

The Hon. THOMAS CORWIN, after being duly sworn, deposed as follows, to wit:

I have been present at several meetings of Whig Senators in the Capitol during the present session. I never saw the British minister there, nor heard of his being there. One object in holding these consultations together was to endeavor, if possible, to unite in some mode of treating the Oregon question, then and now pending, which should give most efficient aid to the administration in any effort to bring the controversy to a just and amicable settlement. I never heard Mr. Colquitt's resolutions discussed at any of these consultations. Whenever I have been at any of these meetings, the subject of a postponement of the vote on the pending question was, I believe, the only one on which there seemed to be a general concurrence of opinion. I do not believe there has been any such meeting of the Whig Senators since Mr. Colquitt offered his resolutions to the Senate. I know of no caucus or meeting of any of the Whig Senators on a Sunday evening, as published in the Times; nor do I believe any such was held. I have dined with Mr. Pakenham but once during this session. I heard no conversation on the Oregon question, nor do I believe any such was moved by anyone. I think Mr. Archer and J. M. Clayton were the only members of the Senate, except myself, who were there that day. I have had no conference with the British minister on the subject of our relations with Great Britain, nor do I know of any such conference between him and any Senator.

THOS. CORWIN.

ROBERT P. ANDERSON (one of the messengers of the Senate), a witness, being produced, duly sworn, and examined, deposed and saith:

That there was no caucus held in any chamber or part of the Capitol on Friday, the 27th of February, last, either by Whig Senators or any other Senators; that Mr. Pakenham, the British minister, was not within the walls of the Capitol that day; or, if he was, I did not see him or hear of his being there. All the time from nine o'clock in the morning until the close of the day it is my duty to be in the Capitol and attending to my business as a messenger of the Senate. I should suppose I should have seen Mr. Pakenham as soon as any one had he been in the Senate on that day. When the Senate is in session there is always a place assigned for foreign ministers to sit in and witness the debates. Foreign ministers very frequently come to the Senate to hear interesting debates, as well as to the other House of Congress, and have always been accustomed to do so. I never saw Mr. Pakenham, the British minister, go into or attend any caucus or consultation of Whig Senators, or Democratic Senators, or any other Senators whatever, nor did I ever tell any person that Mr. Pakenham attended a Senatorial caucus on Friday, the 27th of February, last, or at any other time. I know that Mr. Pakenham was never invited to attend a Whig caucus in the Capitol, for I have served all the notices to attend consultations among the Whig Senators during the whole session, and I know, of my own knowledge, that Mr. Pakenham was never, during the whole time, inside of a room where a Whig consultation was held. I have no recollection of having ever said to Lieutenant Porter, of the Navy, that I had a summons for some of the Whigs to attend a caucus, and I am certain that I did not say so to him on Friday, the 27th of February, last, for on that day there was no caucus or meeting of the Whig Senators whatever, nor has there been any since that day. There has never been a Whig consultation or caucus at which any Democrat attended, and I never knew of a Democratic consultation or caucus at which any Whig attended. Messrs. Calhoun, McDuffie, Colquitt, and Bagby, or either of them, never attended any Whig caucus in the Capitol, or I should have known it.

R. P. ANDERSON.

Mr. Davis, the writer of the letter in the Missouri Republican alluded to in the foregoing article from the Washington Times, having been called upon to state who were the members of Congress to whom he had reference in said letter, named Mr. Webster, of the Senate, and Mr. Winthrop, of the House of Representatives, and in relation to both of them declared that he had no personal authority for charging those gentlemen. It subsequently occurred to the committee that they were not to

receive testimony in regard to members of the House of Representatives, and the name of Mr. Winthrop was withdrawn from the record. In the meantime, however, the fact that the witness had so testified became generally known, and it was therefore thought due to Mr. Winthrop to receive from him the following statement, which was ordered to be spread upon the record:

WASHINGTON, *March 16, 1846.*

DEAR SIR: Having been informed that one of the persons summoned before the committee of which you are chairman gave my name as that of a member of Congress who he had reason to believe had held confidential communications with Mr. Pakenham, the British minister, in regard to the Oregon question, I desire to state, and hereby explicitly do state, that I have never had any confidential communication, consultation, or conference with Mr. Pakenham on that subject in my life. I never heard the subject mentioned where he was, except as one of the topics of the day about which gentlemen speak when they happen to meet.

I know of no confidential consultation or conference held with him on that subject by any other member of either House of Congress, and especially I utterly deny that there is the slightest foundation for imputing to me any consultation, cooperation, agreement, or understanding with the British minister, or any other British agent, in regard to any part of this subject, or any proceedings respecting it.

And to this statement I now tender my oath to the committee.

ROBT. C. WINTHROP.

HON. SPENCER JARNAGIN, &c.

Sworn to before the committee this 16th March, 1846.

S. JARNAGIN, *Chairman.*

The Hon. GEORGE EVANS, a Senator from Maine, having been duly sworn, deposeth as follows, to wit:

The attention of this deponent being called to certain publications in the aforesaid paper called the Daily Times, he (the said deponent) on oath declares and says, that he hath no knowledge of any of the facts or circumstances stated in the said paper printed on the 5th, 9th, 10th, and 11th days of March instant, containing the charges against Senators under investigation by this committee; that the said charges are, so far as he knows and as he firmly believes, wholly without foundation; that he has attended all the meetings of Whig Senators of which he has had any knowledge during the present session of Congress; that Mr. Pakenham, Her Britannic Majesty's minister to the United States, has never attended or been present at any of said meetings; that no concert, or agreement, or arrangement of any kind has ever been had or proposed, to his knowledge or belief, between Whig Senators, or any of them, and Mr. Pakenham, or with Democratic Senators, or any of them, upon the subject of the resolutions relating to the Oregon questions, with a view to embarrass the President in adjusting the controversy with Great Britain, or to induce him or compel him to make any settlement of said controversy inconsistent with the honor, interests, and just rights of the United States; and that all and every of the charges, allegations, and investigations in said several papers contained to that effect are utterly false and groundless, so far as this deponent knows, and as he verily believes. This deponent further says, that he has never attended any meeting of the Whig members of the Senate when any proposition as to the terms upon which the Oregon controversy ought to be settled has been submitted to, discussed in, or agreed upon by such meeting; and that at no time has any reference or allusion been made by any Senators to any opinion or propositions of the British minister upon that subject to which or in which the assent or concurrence of any Senator was sought or desired.

This deponent further saith that he has no knowledge or belief that any meeting of Whig Senators or others has been held since said several publications, and none of the Sunday, 8th instant; and that at no time has any agreement or understanding been had or resolution formed not to prosecute an investigation into the truth of the charges referred to. And he further declares on oath, that he does not know nor believe the existence of any part or circumstance whatever tending in the slightest degree to prove the truth of any of the charges in said several publications now under investigation by the committee.

GEO. EVANS.

H. H. ROBINSON, being called back, further deposed as follows, to wit:

First interrogatory. Do you exchange with the Missouri Republican?

Answer by witness. We do.

Second interrogatory. Was the article extracted from it as being taken from the "great Whig paper of the West" pointed out to you for publication by any person; and, if so, by whom?

Answer by witness. The article was pointed out to me by the publisher of the Times, Mr. Dow.

Third interrogatory. Did any other person than Mr. Dow advise, suggest, or recommend the publication of the article; and, if so, who was it?

Answer by witness. No.

Fourth interrogatory. Was the extract as made by you taken from your exchange copy, or some other copy of the Republican?

Answer by witness. It was taken from a copy furnished by Mr. Dow; not from the exchange copy.

H. H. ROBINSON.

Mr. J. E. Dow, being called back, further deposed as follows:

First interrogatory. From whom did you receive the copy of the Republican alluded to as above?

Answer by witness. I was shown the paper by Dr. Relfe, of the House of Representatives, and begged it to be given to Mr. Robinson.

Second interrogatory. Were there any marks or words written about it before you delivered it to Mr. Robinson to make the extract for quotation and, if so, by whom were said marks made, and by whom the words written, and what the words, if any?

Answer by witness. There were black lines around it, but by whom made I can not say.

JESSE E. DOW.

Deposition of the Hon. John M. Clayton, taken before the Select Committee of the Senate to inquire into the charges of the "Daily Times" newspaper against certain Senators, and duly sworn to on Monday, the 16th day of March, 1846.

Deponent (being first duly sworn), in reply to the interrogatories put to him, deposes and says:

That he has no knowledge of any dinner given by the British minister, Mr. Pakenham, at which Whig Senators or any other Senators attended, for the purpose of discussing or conversing upon the Oregon question, or Mr. Colquitt's resolutions, or the compromise question as it is called, or any other question connected with either of them; nor has he the slightest belief that such a dinner was ever given. This deponent never attended any caucus or meeting, at which Mr. Pakenham attended, for the purpose of conversing or consulting about the Oregon question. This deponent has never attended any caucus or consultation of Whig Senators but once during the present session of Congress, and that was about the beginning of the session early in December last, when a consultation was held to decide how the Whigs should cast their votes for officers and committees of the Senate. He knows nothing of his own knowledge of what occurred at meetings which he did not attend. He never attended but one dinner at the British minister's, and that was more than a month ago; he thinks sometime early in February last. On that occasion there was no caucus or consultation between any Senators and Mr. Pakenham in relation to the Oregon question, or anything connected with it. Indeed, there were but two other Senators present, besides himself, to wit, Mr. Corwin and Mr. Archer. The rest of this dinner party, several of whom were strangers to him, were not members of the Senate, and most of them appeared to be gentlemen who were not members of Congress. I have no recollection of any conversation then held with Mr. Pakenham, by any person, in regard to the Oregon question or Mr. Colquitt's resolutions, and I concur with the statement of Mr. Corwin that there was no such conversation. At that time there could not have been any conversation between any persons about Mr. Colquitt's resolutions of compromise, as they were not offered in the Senate till more than ten days afterwards, and Mr. Colquitt had given no intimation of his intention to offer such resolutions. So far as I can learn, no Whig Senator, except Mr. Crittenden, ever saw Mr. Colquitt's resolutions until the 25th of February, when they were laid before the Senate for the first time and ordered to be printed; and then Mr. Crittenden moved to print them, and alleged that he had not examined them. I fully concur in the testimony of Mr. Schnabel, Mr. Medary, and Mr. Turner, the only witnesses referred to by Mr. Robinson, the publisher of the "Daily Times," so far as regards his (Mr. Robinson's) statements in committee as to alleged admissions of mine. They all swear positively, in direct disproof of his allegation. It is perfectly true that I never had any conversation with either of them on the subjects on which they were called upon to prove my admissions. When I first saw Mr. Schnabel in the committee room I had forgotten that I had ever seen him before, so slight had been my acquaintance with him. I had never had any conversation with him about Mr. Pakenham's dinner or the Oregon question. The same is true of Mr. Medary and Mr. Turner, of Ohio. They were both strangers to me, and they have both sworn truly that they never had any conversation with me in their lives on

any subject. I have no recollection of ever having seen either of them before they appeared in the committee room, summoned as they then were, to prove the statements of the editor of the "Daily Times." I never told any of these gentlemen, or any other person whatever, that, at a dinner given by the British minister, attended by me, "noses were counted" on the Oregon question, or any other question, or that there was any conversation about Oregon there. If there was ever any enumeration of strength of Senators on any question touching Oregon, made at the British minister's by any persons whatever, it was entirely without my knowledge. I suppose there were a dozen persons at this only dinner at Mr. Pakenham's which I ever attended, several of whom appeared to be strangers to each other. Mr. Corwin and myself went in the same carriage; we left at a very early hour, and returned home in the same carriage together.

I think it is due to Mr. Pakenham to state, after all that has transpired, that, on every occasion upon which I have had the honor to meet him, his conduct has not only been gentlemanly and honorable, but he has been prudent and remarkably guarded and reserved on all subjects connected with the Oregon controversy. Amidst all the difficulties of his position, and while dispensing the courtesies which properly become his high station, it has been a common remark among members of Congress with whom I have conversed that he has never exhibited the slightest indiscretion or exposed himself to a charge of the slightest impropriety; and I have yet to meet with the first gentleman, either in or out of Congress, who has hesitated, when speaking of him, to express the highest estimation of him as a gentleman and an honorable man.

I know of no caucuses held by Whig Senators, or other Senators, with a view to discuss Mr. Colquitt's resolutions or any other propositions of compromise. All those Senators who have acted with me on the Oregon question have steadily considered and treated it as a national question, and not as a party question. Their avowed object always has been to enable the administration to settle it as soon as possible on the best terms for the country. I have no recollection now of having heard of more than two consultations by the Whig Senators about Oregon. The first of these was on the 12th of February last, when some of them assembled in a room of the Capitol to consult as to the course which should be taken in the discussion of the question of notice, as they afterwards informed me. I was about to make a speech on that day on the question of notice, being the first one of the number who had taken the floor on that subject. They sent one of their number to advise with me, and I told him I had resolved not to discuss the question of title up to 54° 40' in open session at that time. This, he said, met with their views. Nothing was said about compromise, or I should have heard it. The other occasion on which a consultation of Whig Senators was held was, I think, on Tuesday, the 24th day of February last, when, although I did not attend the meeting, yet I know from what some of them told me immediately afterwards, the question they discussed was, whether it was not most prudent, in the present supposed perilous condition of public affairs, to postpone the whole subject of Oregon for several weeks? So far from deciding at *that* (which was their *last* consultation or meeting) to push Mr. Colquitt's resolutions to send to England by the steamer which was to leave this country in a few days, they communicated their wishes to me that the whole subject should be postponed for at least a fortnight. I found also that Mr. Dayton had been instructed by them to move the postponement, who made the motion accordingly on the 25th of February, but withdrew it only because he found, or believed he had ascertained, that it would be opposed by all the Democratic Senators, and that we could not carry it. At the time of this *last* consultation of the Whig Senators which has been held Mr. Colquitt's resolutions had not been offered in the Senate. I know of no secret caucuses between the Whigs and any other Senators. I know of no meeting held anywhere, secret or otherwise, attended to consult about Oregon with Whig Senators or any other Senators. I know not, nor have I heard, of any caucus or consultation held among the Senators, on the night of Sunday, the 8th instant, in reference to the "Times" newspaper, nor have I any belief that such a caucus or consultation was held. I know of no act done or word spoken by any American Senator, in reference to Oregon, which could possibly subject him, in justice, to the gross abuse of the newspaper called the "Daily Times," or any of its charges of corruption.

JOHN M. CLAYTON.

The Hon. JOHN DAVIS, a Senator from the State of Massachusetts, appeared; and having been duly sworn, deposed as follows, to wit:

The subscriber having been summoned to appear before the committee appointed by the Senate of the United States to investigate certain charges of corruption preferred against members of that body by a newspaper called the "Daily Times;" and having exhibited to him a written paper filed by H. H. Robinson, in which he states that he expects to prove by the subscriber, and several other Senators therein

named, "that several caucuses of Whig Senators were at different times held, at which the compromise of the Oregon dispute was debated, in several various shapes," the subscriber makes answer thereto as follows, to wit: He knows no reason why Mr. Robinson should entertain the belief that such facts could be proved by the subscriber, as he has no knowledge of any caucus or meeting of Whig Senators, or others, at which the compromise of the Oregon dispute was debated or considered in any *shape* whatever.

The subscriber finds, also, a further statement of said Robinson, in which he avers that he expects to prove by the same Senators "that propositions were made to a portion or all of them to compromise the question, by Messrs. Calhoun, Colquitt, McDuffie, Haywood, and Bagby, or by either of them;" and he answers thereto that he has no knowledge of any such propositions made by any of said gentlemen; none was made to the Senators, and if any was made to others he is ignorant of the fact.

He would further add that he has known of but two caucuses or meetings of Whig Senators since the commencement of the session of Congress, the last of which was about three weeks past; that he was present during only a part of the time; that they were held in the Capitol at midday, just before the assembling of the Senate; that no person was present except Whig members; that such meetings continued for a short period only, and that nothing, as far as the knowledge of the subscriber goes, was debated, discussed, or moved therein which related to Oregon, except the expediency of deferring to a later day the debate in the Senate upon the questions then pending before it, which was not esteemed a matter of much importance, and, though afterwards moved in the Senate, was not pressed to a vote. The subscriber will also add that he knows of no interview between the British minister and any Senator or Senators, under any circumstances whatever, at which the Oregon matters were discussed or made a topic of conversation.

The foregoing is, as the subscriber believes, a full answer to the suggestions contained in the written memorandum; but he holds himself in readiness to answer any other inquiries which may be made.

J. DAVIS.

The Hon. W. S. ARCHER made the following statement, to wit:

A statement having been requested of me in relation to any knowledge I may possess on the subject of the charges against members of the body which a committee of the Senate have under consideration, I state that I have no knowledge of anything going in any degree to sustain the said charges, or any part of them; that I have attended at two or three consultations or caucuses of the Whig party for the purpose of advisement of the subject of the proper disposal of the Oregon question; that at only one of these was a distinct proposition put to vote, on which it was decided that a motion should be made in the Senate for postponement (which was made subsequently by Mr. Dayton), and this meeting was anterior to the submission of Mr. Colquitt's proposition of amendment; that on the subject of these propositions I know of no caucus consultation; my own opinion was given to Mr. Crittenden in favor of his acceptance of the resolutions in place of his own resolutions, which opinion I recollect did not appear to meet the immediate concurrence of several Senators near to his and my seats in the Senate, contiguously to which our first conversation took place.

Having been asked if I knew of any Whig caucus having decided that no notice should be taken of the article in the Times newspaper, I answer that I heard of none, though I heard various opinions expressed when Senators met each other, and chiefly in the Senate Chamber. If I have ever heard the Oregon question mentioned at the table of the English minister it has only been in the manner in which any other topic of the day might be mentioned, and without members of the Senate composing an unusual proportion of the company.

W. S. ARCHER.

MARCH 16, 1846.—Sworn before

S. JARNAGIN, *Chairman*.

The Hon. REVERDY JOHNSON made the following statement, to wit:

I never had any knowledge of any secret or other caucus of the Whig Senators, or any portion of them, held anywhere, at which the compromise of the Oregon controversy was mentioned or debated in any shape whatever; nor have I any knowledge that any proposition of compromise was ever made to the Whig Senators, or any portion of them, by Messrs. Calhoun, Colquitt, McDuffie, Haywood, Bagby, or by any other Senators or persons. I have not the honor of much personal acquaintance with the British minister, and have never been, at any time, at any entertainment given by him, or met him at any dinner given by any one else; nor, except in the articles of the "Times," did I ever hear of any such entertainment at such minister's when the subject of Oregon was mentioned.

I have been present at two or three meetings of Whig Senators, held during the present session, but at neither of them was the subject of compromise of the Oregon controversy mentioned or debated. The objects and results of these meetings were as stated in the evidence of the Hon. Mr. Berrien.

Of Mr. Colquitt's amendment to the resolutions proposed by Mr. Crittenden I had no knowledge until it was read by him in his seat in the Senate, except that I had understood that he proposed to offer an amendment, but what it was, or was to be, I had no knowledge until the period referred to.

REVERDY JOHNSON.

MARCH 16, 1846.—Sworn before

S. JARNAGIN, *Chairman*.

The committee did not deem it necessary to wait for the testimony of the Hon. James F. Simmons, who is absent on a visit to his home, in the State of Rhode Island.

The foregoing is all the testimony heard by the committee; and the testimony being closed, after consultation, a report was agreed upon, to be presented to the Senate. The chairman of the committee having been referred to as a witness, and examined, it was resolved that the Hon. Thomas H. Benton prepare and present the report, which was done accordingly.

The committee then adjourned.

SPENCER JARNAGIN, *Chairman*.

Attest:

W. B. WEBB, *Clerk*.

The Senate proceeded to the consideration of the report, which was debated by Messrs. Turney, Dickinson, Jarnagin, Berrien, and Benton, and was then unanimously agreed to. (*See Globe*, pp. 500, 501, 502.)

The following extracts from the *Globe* give the debate and action, viz:

Mr. TURNEY rose and said that, being a member of the committee, it might be proper for him to say that he entirely concurred in the report. As far as the testimony went, every charge had been negatived; it appeared that the calumny was wholly without foundation.

Mr. DICKINSON remarked that, occupying the position he did in regard to Oregon, it would not be supposed that he had any particular sympathy with this proceeding. He did not regard it as a matter of sufficient importance to claim the serious attention of the Senate; yet, an investigation having taken place, he deemed it his duty to say that the evidence given before the committee did not implicate a single Senator in the remotest degree. The report was, therefore, correct, and though it had not been signed by all the members of the committee, he believed it might be considered a unanimous report. But in reference to the excluding of the editors and reporters of the *Daily Times*, though he would not oppose the will of the Senate if it were the sense of that body that they should be excluded from the occupation of the seats in the reporters' gallery, yet he would say this much in regard to those gentlemen (for they had given their evidence in an exceedingly courteous and gentlemanly manner before the committee), that he believed them to have been the victims of imposition rather than as having any intention to slander the Senate.

It was a time of considerable public excitement, and what they had written was written rashly, hastily, improperly, and without the support of authority or proof; but, in his view of the matter, this was not the proper way to correct the errors of the press, and unless the Senate deemed it necessary to vindicate its dignity he thought that it should have been passed by entirely unnoticed. He, in making these observations, did not wish to be understood as going against the sense of the Senate, but he did not think anything was to be gained by attempting to fetter the freedom of the press. Besides, by refusing to these gentlemen seats in the reporters' gallery, they would not be excluded from the Senate. They would still have access to the gallery appropriated to the use of the public. Senators were at all times liable to have their motives and their actions misrepresented. And what was the remedy? Ought they to undertake to exclude every individual who thus misrepresents them? No. Instead of taking a course so utterly vain and useless, he would be in favor of following the recommendation of the Senator from Missouri and admitting on the floor of the Senate certain authorized reporters, that their proceedings might be truly and fairly reported. The reporters in the gallery had not an opportunity to report correctly. It had been represented to him, and he believed truly, that it was impossible for them to hear all that was said; and they were, besides, subjected to interruptions from conversation carried on by persons about them; but he was sorry to add that he believed there were some who had no disposition to report correctly. There were some who seemed to take pleasure in omitting what was really said and

in putting language in the mouths of Senators which they never uttered. This had frequently been the case in reference to himself; but how was the evil to be corrected? His own opinion was that the press ought to be left as free as air. No man was ever slain by a paper bullet, unless he discharged it himself. An individual might be placed in a false light for a time, but men would be eventually weighed in even balances. Abuse, slander, vituperation might for a time overflow their natural boundaries and obscure those who happened to stand in the way of the filthy stream, but after awhile it would resume its natural channel. He would give it entire freedom. If he had his own choice, he would place no restriction upon it. He would allow any individual who chose to go into the galleries, and if he thought proper to libel the American Senate he would leave him to the ordeal of public opinion. With regard to the present case, he would repeat that he regarded these men as victims of imposition rather than as malicious slanderers; and he took very great pleasure in saying that every member of that body had been fully vindicated from the aspersions cast upon them.

Mr. JARNAGIN rose and observed that, being the chairman of the select committee, it would naturally have devolved upon him to make the report, but he most unexpectedly found his name among those who were called upon to testify. The honorable Senator from Missouri had, therefore, taken his place and drafted the report. He would also take occasion to say, while he was up, that other Senators whose names were placed in connection with his own, would be somewhat surprised, perhaps, as finding themselves referred to as witnesses. He found by a statement presented by the editor of the Times that he expected to prove his allegations by certain Senators whose names he appended. The committee, however, did not think proper to inform those gentlemen that they were about to have the distinction as appearing as conspirators upon the charge of Mr. H. H. Robinson, and also to be witnesses to give evidence of the conspiracy.

But it had been said that the reporters, from the position they occupied, found it extremely difficult to hear. No doubt this was true. He found that the Senator from North Carolina (Mr. Haywood) had not made himself distinctly heard by the Times at all events; for he found that he had been represented as having addressed the Senate "in favor of arbitration, or any pacific arrangement of the question."

He had only to observe that the reporter for the Times must have been unfortunately situated. Had he (Mr. J.) been in the gallery he might possibly have understood the Senator as arguing in favor of arbitration; but, as it was, he certainly did not so understand him. He would suggest that a specific number of copies of the report be ordered to be printed. He believed the Senator from Missouri had not named the number.

Mr. BERRIEN said he heard with great regret—and the more so from the fact that the Senator from New York (Mr. Dickinson) was himself a member of the select committee—he heard, he said, with great regret the expression of his opinion that the authors and publishers of the libel upon the Senate of the United States were the victims of imposition. He inquired of the Senator whether he understood him correctly?

Mr. DICKINSON replied he had said, in connection with other matters, that he regarded those gentlemen more as victims of imposition than as being guided by any malicious intention; and he thought a careful attention to the circumstances of the case would bear him out in that conclusion. He had no intention of defending them; he thought they were exceedingly in fault. They had done wrong in publishing the statements they did without evidence; but from what attention he had given the case he believed that their fault lay in listening to suggestions to which they should not have listened.

Mr. BERRIEN said he did not rise for the purpose of entering into any discussion with the Senator as to the correctness of his opinion on the subject of the motives which actuated the authors and publishers of the calumny; but he rose to express, and he begged now to repeat the expression of his unaffected surprise, that a member of that body, and a member of the committee who concurred in the report which had just been read, should here intimate the belief that the publishers of that paper were victims of imposition. By whom were they imposed on? The report in which the Senator concurred informed them that they were called upon to state the sources whence their information was derived, and that ample opportunity was given them to explain whether they had been imposed on, and, if so, how, and by whom; and the report further informed the Senate, that, having availed themselves of the privilege of designating the sources of their information, they were, in each and every instance, contradicted by the persons to whom they referred. He paused, then, to inquire how it was that, in the face of that report, any Senator, and especially any member of the committee, could, in the face of the American Senate, affirm his belief that the men who, by their own confession, had uttered an unfounded calumny against the Senate, were the victims of imposition, and not influenced by any malevolent intention. The report of the committee, if he understood it, contained

the declaration that the individuals had no personal knowledge of the facts stated in their publication; and it moreover contained evidence that they had no authority derived from other persons. Divested, by their own confession, of all foundation for their statements, they stood before the country, not as the victims of imposition, but as base calumniators of the Senate.

Mr. DICKINSON said he would not take issue on a point he had not made, nor would he allow the Senator from Georgia to do so. The Senate of the United States could well afford to be magnanimous; and, in pursuing its own vindication, it was unnecessary to go beyond vindication. He rose to address the Chair, believing it became his position and being unwilling as a member of the committee to sit silently by, not having signed the report, without adding his evidence, without qualification, that the Senate and every member of the Senate were fully and triumphantly vindicated. The only point he had made was, that he doubted the propriety of excluding these men from the gallery. If the Senate, by adopting the report in full, exclude these men from the reporters' gallery, the gallery appropriated to the public would still be open to them. He had suggested his remedy against misrepresentation, which was by placing reporters upon the floor of the Senate where they could hear, and making them responsible; and the country might then look to their reports as being authentic.

No Senator of his age had received so many rebukes as himself, but he regarded them as the idle wind, believing that they were, as shopkeepers supply their articles, to order; and he was not disposed to find fault with the manner in which this was done.

He regretted that the remarks which he had thought it his duty to make had been reviewed with such unnecessary severity by the Senator from Georgia. Concurring in the report, he had only expressed his doubt as to the propriety of excluding the editors or reporters from the gallery, because he thought the publication had been rather the result of thoughtlessness than malicious intention.

The report was then unanimously concurred in *nem. con.*

Mr. BENTON observed that he perceived the hour had arrived for proceeding with the special order, and he would not occupy the time of the Senate with any other motion, but it was his intention, on to-morrow, to move for the printing of an extra number of copies of the report.

Mr. J. M. CLAYTON suggested that the person who was in custody for refusing to give evidence, as stated in the report, should be discharged.

Mr. BENTON said the witness was not in custody; he had been merely notified to attend.

This action terminated the proceedings of the Senate in respect to the said publications. An examination of the records of the Senate fail to show that the representatives of the Times were again allowed admission to the gallery assigned the press.

LIBEL ON THE SENATE.

TWENTY-NINTH CONGRESS, SECOND SESSION. GEORGE M. DALLAS, OF PENNSYLVANIA, VICE-PRESIDENT.

LIBELOUS PUBLICATION IN THE UNION, OF WASHINGTON, D. C.

On February 10, 1847, Senator David L. Yulee, of Florida, submitted the following resolutions, viz:

Resolved, That the editors of the Union—a newspaper published in the city of Washington—having in a publication contained in a number of that paper dated the 9th of February, issued and uttered a public libel upon the character of this body, they be excluded from the privilege of admission to the floor of the Senate.

Resolved, That the report of the proceedings of the Senate of the 8th of February, in relation to the bill entitled "An act to raise, for a limited time, an additional military force, and for other purposes," is partial and unjust to this body, and that the reporter for that paper be excluded for the residue of the session from a place in the gallery of the Senate.

Mr. Sevier, of Arkansas, objected to its present consideration. Mr. Westcott, of Florida, insisted that the resolution presented a question of privilege, and that his colleague (Mr. Yulee) had a right to proceed. The presiding officer ruled that objection being made to its consideration, the resolution must lie over one day under the rule. From this decision, Mr. Badger, of North Carolina, appealed, on the ground that the resolution involved a question touching the dignity of the Senate and the privileges of its members, and could not be within the operation of the rule. After a brief debate the further consideration of the appeal and resolution was postponed until the following day.

On February 11 the Senate resumed the consideration of the said appeal, which was debated by Senators Badger, Webster, Corwin, Sevier, and Allen. A motion to table the appeal was rejected by yeas 21, nays 27, and by a yea-and-nay vote of 28 to 20 the appeal was sustained, thus reversing the decision of the chair.

On February 12th and 13th, the resolutions were considered and debated during the entire sessions of said days, and on the 13th the first resolution was adopted by yeas 27, nays 21, and the second resolution was withdrawn.

On March 2 Mr. Benton submitted a resolution rescinding the resolution of February 13, expelling Mr. Ritchie from the floor, but the same was rejected.

PRIVILEGES AND CONTEMPT OF THE SENATE—PUBLICATION OF
TREATY WITH MEXICAN REPUBLIC IN THE NEW YORK HER-
ALD—CONTUMACIOUS WITNESS.

THIRTIETH CONGRESS, FIRST SESSION. GEORGE M. DALLAS, VICE-PRESIDENT.

CASE OF JOHN NUGENT.

THURSDAY, MARCH 23, 1848.

This case, growing out of the publication by the New York Herald of a treaty then pending before the Senate in executive session, is given for the reason that the decision of Judge Cranch of the circuit court of the District of Columbia at the May term of 1848 (*ex parte* John Nugent, on habeas corpus; American Law Journal, Vol. VIII, New Series, Vol. I, p. 107), gives an elaborate summary of leading English cases, and followed the decision of the Supreme Court in *Anderson v. Dunn*. (6 Wheat., 224, and in *Kearney's case*, 7 Wheaton, 41.)

The proceedings in respect to Nugent were had in executive session and appear in the Executive Journal of the Senate, vol. 7, from 1845 to 1848. Nugent was retained in the "close custody of the Sergeant-at-Arms of the Senate" in accordance with the order of the Senate until April 28, when he was discharged from custody, "he being represented to be seriously indisposed."

On account of its importance, covering as it does quite fully the question of the extent of the power of the Senate "to punish for contempts of its authority in cases of which it has jurisdiction" and as also settling the question as to the power of the Senate "to pronounce judgment in secret session for a contempt which took place in secret session" the decision of the court is given in full in the appendix of judicial decisions, for which see index. The case is reported in Cranch's (District of Columbia) Reports, and is also to be found in the American Law Journal, Vol. VIII, New Series, Vol. I, p. 107.

THE GARDINER CLAIM—CONNECTION OF THOMAS CORWIN, SECRETARY OF THE TREASURY—ACT TO PREVENT FRAUDS ON THE TREASURY—PUNISHING ATTEMPTS TO BRIBE OR CORRUPT MEMBERS OF CONGRESS AND OTHER OFFICERS OF THE GOVERNMENT.

THIRTY-SECOND CONGRESS, SECOND SESSION. LINN BOYD, OF KENTUCKY, SPEAKER.

The investigation of the Gardiner claim (before the Mexican Claims Commission) and the connection of Secretary Corwin therewith, authorized by the resolution of August 23, 1852 (see House Report No. 1, first session Thirty-second Congress, vol. 31), made by Preston King, of New York (and filed with the Clerk of the House during the recess of Congress), led to the enactment of the act of February 26, 1853, "To prevent frauds upon the Treasury of the United States" (Statutes at Large, vol. 10, p. 171), which now appears as sections 5450, 5451, 5500, and 5510, Revised Statutes.

The case is included here for the reasons that it is the "pioneer" act in respect to prescribing punishment for bribery or attempted bribery of officers of the Government and members of Congress; that the debate in both Houses thereon was very full and exhaustive, and that the cases arising thereunder and tried in the supreme court of the District of Columbia (see also Clark and Fulton Case, 12 Court of Claims Reports, p. 597) led to further legislation on this subject. The bill reported by Mr. King (H. R. 326) was considered in the House on January 6, 11, 12, 13, and 14 (see Globe of said dates), and on the last-named day was passed by yeas 134, nays 23. The bill passed the Senate on January 25 with important amendments, all of which, save two, were agreed to, and those settled by conference committee. Section 6 of said act (now sections 5450, 5451, 5500, and 5501, Revised Statutes) is herewith given:

SEC. 6. *And be it further enacted*, That if any person or persons shall, directly or indirectly, promise, offer, or give, or cause to procure to be promised, offered, or given, any money, goods, right in action, bribe, present, or reward, or any promise, contract, undertaking, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to any member of the Senate or House of Representatives of the United States, after his election as such member, and either before or after he shall have qualified as such member and taken his seat, or to any officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Department of the Government of the United States, or under the Senate or House of Representatives of the United States, after the passage of this act, with intent to influence his vote or decision on any question, matter, cause, or proceeding which may then be pending, or may by law, or under the Constitution of the United States, be brought before him in his official capacity, or in his place of trust or profit, and shall be thereof convicted, such person or per-

sons so offering, promising, or giving, or causing or procuring to be promised, offered, or given any such money, goods, right in action, bribe, present, or reward, or other valuable thing whatever, and the member, officer, or person who shall in anywise accept or receive the same, or any part thereof, shall be liable to indictment as for a high crime and misdemeanor in any court of the United States having jurisdiction for the trial of crimes and misdemeanors; and shall, upon conviction thereof, be fined not exceeding three times the amount so offered, promised, or given, and imprisoned in a penitentiary not exceeding three years; and the person convicted of so accepting or receiving the same, or any part thereof, if an officer or person holding any such place of trust or profit as aforesaid, shall forfeit his office or place; and any person so convicted under this section shall forever be disqualified to hold any office of honor, trust, or profit, under the United States.

BREACH OF PRIVILEGES OF THE SENATE—ASSAULT UPON A SENATOR.

**THIRTY-FOURTH CONGRESS, FIRST SESSION. WILLIAM R. KING, OF ALABAMA,
VICE-PRESIDENT.**

ASSAULT UPON CHARLES SUMNER, OF MASSACHUSETTS, BY REPRESENTATIVE PRESTON S. BROOKS, OF SOUTH CAROLINA.

This case is included for the reason that it is the only one of this character taken cognizance of by the Senate, and that the extended debates in the House of Representatives embrace many interesting precedents and citations of judicial decisions in addition to those cited in the respective Senate and House reports.

The differences between the two Houses in respect to the matter of jurisdiction in respect to breaches of privileges committed by members of one house as against the other body are fully presented.

Briefly stated, the facts are as follows:

On May 22, 1856, while Senator Sumner was seated at his desk in the Senate Chamber, after adjournment for the day, he was assaulted by Representative Preston S. Brooks, of South Carolina, and severely wounded.

The following day the matter was brought to the attention of the Senate by Senator Henry Wilson, of Massachusetts, whereupon Senator William H. Seward, of New York, submitted a resolution providing for the appointment of a committee to inquire into and report to the Senate the facts, etc., which resolution was adopted, and Senators James A. Pearce, of Maryland; Philip Allen, of Rhode Island; Henry Dodge, of Wisconsin; Henry S. Geyer, of Missouri, and Lewis Cass, of Michigan, were appointed said committee.

On May 28, the committee, through Mr. Pearce, submitted the following report, viz:

The select committee appointed to inquire into the circumstances attending the assault committed upon the person of the Hon. Charles Sumner, a member of the Senate, report:

That, from the testimony taken by them, it appears that the Hon. Preston S. Brooks, a member of the House of Representatives from the State of South Carolina, did, on the 22d day of the present month, after an adjournment of the Senate, and while Mr. Sumner was seated at his desk in the Senate Chamber, assault him with considerable violence, striking him numerous blows on and about the head with a walking stick, which cut his head and disabled him for the time being from attending to his duties in the Senate. The cause of this assault was certain language used by Mr. Sumner in a debate on the Monday and Tuesday preceding, which Mr. Brooks considered libelous of the State of South Carolina, and slanderous of his near kinsman, Mr. Butler, a Senator from that State, and who at the time was absent from the Senate and the city.

The committee forbear to comment upon the various circumstances which preceded and attended this affair, whether by aggravation or extenuation, for reasons which will be sufficiently obvious in the latter part of the report.

They have examined the precedents, which are to be found only in the proceedings of the House of Representatives, the Senate never having been called on to pronounce its judgment in a similar case.

In the House of Representatives the different opinions have, at various times, been expressed by gentlemen of great eminence and ability, among whom may be mentioned the late President of the United States, Mr. Polk, the late Judge Barbour, of the Supreme Court, and Mr. Beardsley, of New York; yet the judgment of the House has always held an assault upon a member for words spoken in debate to be a violation of the privileges of the House.

The committee do not consider it necessary to discuss the question at length, but proceed to state some of the precedents, not confining them, however, to the case of assault upon members.

In March, 1796, Mr. Baldwin, a member of the House of Representatives, presented to the House certain correspondence between himself and Gen. Gunn, a Senator from the State of Georgia, including a challenge addressed to him by Gen. Gunn.

These were referred to a committee, of which Mr. Madison was chairman, who reported by their chairman that the same was a breach of the privileges of the House on the part of Gen. Gunn, and Mr. Frelinghuysen, a Senator from New Jersey, by whom the challenge had been borne.

In May, 1828, a personal assault having been made by Mr. Russell Jarvis upon Mr. John Adams, the private secretary of the President, just after his delivering a message to the House of Representatives, and while on his way to the Senate with another message, the matter was, on complaint of the President, referred to a select committee, a majority of the committee, by Mr. McDuffie, of South Carolina, their chairman, reported that—

“Upon a view of all the circumstances, the committee are of the opinion that the assault committed by Mr. Jarvis upon the private secretary of the President, whatever may have been the causes of provocation, was an act done in contempt of the authority and dignity of this House, involving not only a violation of its own peculiar privileges, but of the immunity which it is bound, upon every principle, to guarantee to the person selected by the President as the organ of his official communications to Congress. It is of the utmost importance that the official intercourse between the President and the legislative department should not be liable to interruption. The proceedings of Congress would not be more effectually arrested by preventing the members of either House from going to the hall of their deliberations than they might be by preventing the President from making official communications essentially connected with the legislation of the country.

“The power in question grows out of the great law of self-preservation. It is, no doubt, very liable to abuse, and ought always to be exercised with great moderation. In its very nature it is not susceptible either of precise definition or precise limitation. Each particular instance of its exercise must be adapted to the emergency which calls for it. While, therefore, the committee deem it a matter of great importance to maintain the existence of this power as an essential means of vindicating the dignity and privileges of the House, they are clearly of the opinion that it ought never to be exercised except in cases of strong necessity, and that the punishment inflicted under it ought never to be carried further than shall be absolutely and imperiously required by the existing emergency.”

In 1832 the House of Representatives, after a long trial and thorough discussion of the question, voted that Gen. Houston, by making a personal assault on Mr. Stansberry, a member of the House, for words spoken in debate, was guilty of a contempt and violation of the privileges of the House.

The committee acknowledge the force of these precedents, and adopt the reasoning quoted from Mr. McDuffie's report.

But while it is the opinion of the committee that this assault was a breach of the privileges of the Senate, they also think that it is not within the jurisdiction of the Senate, and can only be punished by the House of Representatives, of which Mr. Brooks is a member.

This opinion is in strict conformity with the recognized parliamentary law.

Hatsell in his precedents says as follows:

“The leading principle which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other. From hence it is that neither House can claim, much less exercise, any authority over a member of the other; but, if there is any ground of complaint against any act of the House itself, against any individual member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offense is charged to be committed; and the nature and mode of redress or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed, any other proceeding would soon introduce disorder and

confusion, as it appears actually to have done in those instances where both Houses, claiming a power independent of each other, have exercised that power upon the same subject, but with different views and to contrary purposes." (3 Hatsell, 67.)

"We see from the several precedents above cited that neither House of Parliament can take upon themselves to redress any injury or punish any breach of privilege offered to them by any member of the other House; but that in such case the usual mode of proceeding is to examine into the fact and then to lay a statement of that evidence before the House of which the person complained of is a member." (*Ibid.*, 71.)

Mr. Jefferson, in the Manual of Parliamentary Practice prepared by him, lays down the following rule:

"Neither House can exercise any authority over a member or officer of the other, but should complain to the House of which he is a member, and leave the punishment to them."

A brief examination of the Constitutional privileges of Senators and Representatives will show the soundness of this rule of parliamentary law.

The Constitution provides (Art. I, sec. 6) that "they shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same."

But the Senate is not a court of criminal judicature, empowered to try the excepted offenses. It can not take cognizance of a breach of the peace *as such*. It can not take any notice of it except as a breach of its privileges, and in this character it is not one of the cases in which the privilege from arrest is excepted. The Senate, therefore, for a breach of its privileges, can not arrest a member of the House of Representatives, and *a fortiori* it can not try and punish him.

That authority devolves solely upon the House of which he is a member.

It is the opinion of the committee, therefore, that the Senate can not proceed further in the present case than to make complaint to the House of Representatives of the assault committed by one of its members, the Hon. Preston S. Brooks, upon the Hon. Charles Sumner, a Senator from the State of Massachusetts.

The committee submit herewith certain affidavits taken by them in this case, and the following resolution:

Resolved, That the above report be accepted, and that a copy thereof, and of the affidavits accompanying the same, be transmitted to the House of Representatives.

The said resolution was adopted, and the report and accompanying affidavits transmitted to the House of Representatives. That body had, on motion of Lewis D. Campbell, of Ohio, appointed a select committee to investigate the subject and report the facts to the House, with such resolutions in reference thereto as, in their judgment, might be proper. The committee, consisting of Mr. Campbell; Mr. F. E. Spinner, of New York; A. C. M. Pennington, of New Jersey; Howell Cobb, of Georgia, and Alfred B. Greenwood, of Arkansas, submitted its report on June 2, the majority, consisting of Messrs. Campbell, Spinner, and Pennington, recommending the expulsion of Mr. Brooks, and declaring its disapprobation of the said act of Henry A. Edmundson, of Virginia, and Lawrence M. Keitt, of South Carolina (who were aware of the contemplated assault, and accompanied Mr. Brooks to the Senate chamber, preventing the interference of others while Mr. Sumner was being assaulted). Messrs. Cobb and Greenwood submitted their views as a minority, concluding with a resolution declaring that the House had no jurisdiction over the said assault.

The subject was discussed from time to time until July 14, when, by a vote of yeas 66, nays 145, the said resolution submitted by said minority was rejected, and the resolution reported by the committee for the expulsion of Mr. Brooks was rejected, by yeas 121, nays 95 (two-thirds not voting in favor thereof).

After the announcement of the vote, Mr. Brooks by unanimous consent addressed the House, and at the conclusion of his remarks announced that he was "no longer a member of the Thirty-fourth Congress."

Mr. Brooks was reelected, and took his seat in the House on August 1, 1856.

After a long parliamentary contest the second resolution reported by the committee was divided, and by a vote of yeas 106, nays 96, the House declared "its disapprobation of the said act of Lawrence W. Keitt in regard to the said assault," and, by a vote of yeas 60, nays 136, rejected the resolution that "this House hereby declares its disapprobation of the said act of the said Henry A. Edmundson in regard to the said assault."

On July 10 Mr. Keitt, after submitting some remarks, announced that he was "no longer a member of this House." He was reelected, and took his seat in the House on August 6, 1856.

CHARGE OF A CORRUPT ORGANIZATION OF MEMBERS OF CONGRESS—CONTUMACIOUS WITNESS.

THIRTY-FOURTH CONGRESS, THIRD SESSION. NATHANIEL P. BANKS OF MASSACHUSETTS, SPEAKER.

CASE OF J. W. SIMONTON.

This case is inserted in full, including the debates in both Houses of Congress on the passage of the act of January 24, 1857, entitled "An act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony" (Stat. at Large, Vol. II, p. 155; see also index to this compilation). It is so included for the reason that the conditions and circumstances leading to its passage, and the interpretation placed upon the provisions of said act, are of great importance in determining its proper construction, and for the further reason that in the succeeding Thirty-fifth Congress a case arose (that of J. W. Wolcott, see index) in connection with the investigation of the charge of corruption in passage of the tariff act of March 3, 1857.

JANUARY 9, 1857.

[Congressional Globe, p. 274.]

* * * * *

MR. WILLIAM H. KELSEY, of New York. Mr. Speaker, I rise to what I hold to be a question of privilege; and, as the basis of a resolution I propose to offer, I send to the Clerk's desk an editorial article of the New York Times of Tuesday, January 6, in order that it may be read to the House.

The Clerk read the article, as follows:

PIRACIES OF THE WASHINGTON LOBBY—THE LAND ROBBERIES.—It will be seen by our Washington letter this morning that a new and magnificent land stealing scheme is about to be bought upon the carpet in the House of Representatives; and if a thorough combination of all the wicked influences which surround and corrupt the judgment of Congress in these evil days shall prove stronger than common sense and honesty, we may soon be called upon to announce that the Territory of Minnesota has been delivered up almost without reserve to various bands of speculators, whose practices in obtaining these grants afford the surest proof that the interests of that vast and prosperous region ought not to be intrusted to their hands.

Did this project rest for success upon the unbiased action of Congress in the exercise of its mature and honest judgment, there would be no danger of its adoption. But it does *not* rely upon its merits. On the contrary, its demerits are confessed in the extraordinary and shameless influences by means of which it seeks to succeed. Every robber who in the guise of a lobby agent levies tribute upon measures before Congress as the price of his forbearance from assault, is up to his eyes in this scheme; and, unless rumor, confirmed by a hundred acts which "speak louder than words,"

is false, the Minnesota land bill numbers among its supporters who are to profit by its success, at least 30, and probably 40, members of the House of Representatives. This seems a bold charge to make; and the honest reader may incline to ask why, if these things are so, the guilty parties are not exposed and punished?

Unfortunately these horrible abuses are difficult to reach through ordinary channels. The unprincipled creatures who use Congress to pick pockets for them, belong to a shrewder school of rogues than do those who pick pockets on the street. They stand high in the community. The term "honorable" prefixes their names wherever spoken or read—and the glare of their position tends somewhat to obscure their crime. They plan their villanies with great caution to prevent detection. Their bribes are seldom paid direct to the parties whose votes are bought. Some outsider—an ex-member of Congress, for instance, who uses his privilege of the floor to prosecute his new calling as the head of the black-mail banditti—makes all the bargains, tips the wink to his marked, priced, and labeled merchandise, sitting in members' seats, receives the money, and distributes the spoil. A committee of investigation is always foiled in its efforts to get at the truth—for the man who consents to receive pay for his vote, will certainly lie to conceal his crime, and the ex-member who organizes and controls the banditti will not hesitate even at perjury to protect his band, and save from utter destruction a business for which he has bartered away his self-respect, and periled all that is worthy in life.

There is but one way in which the evil can be reached and cured, and that is through the press. For this purpose the evidences are ample. The testimony possibly may not be of the character which a court of law would admit, where grand scoundrels obtain shrewd lawyers to plead wickedness as the evidence of insanity; yet we have no fear but that we can present evidences sufficient to carry moral conviction to every honest heart, and thus bring the power of public sentiment to drive the criminals from the high places whose trusts they have dishonored. *We know that a corrupt organization of members of Congress and certain lobby agents at Washington has existed since early in the session of last year. We are well satisfied that this organization holds the balance of power in its hands sufficient, in most cases, to kill or carry any measure pending in the House of Representatives, and that its power has been exerted in favor of measures where its price (\$1,000 per vote generally, or its equivalent) was agreed to; and that it has been used to prevent favorable action on equally meritorious measures which were unable or unwilling to submit to the piratical tribute.*

This organization is confined to no party, but embraces members of them all—for it is a singular and notorious fact, that while patriotism cannot rise above partisan considerations, villiany can. There are many of those connected with it, we do not doubt, who have been brought into it by the devices of others, and without any full conviction on their own minds of its real character. But of its existence, and its power over legislation, there can be as little doubt as there is of its turpitude, and of the duty of the public press to expose it to the knowledge and condemnation of the country.

Mr. KELSEY. The charges contained in that article appear to be based upon a letter written from this city to that paper—the New York Times. Under ordinary circumstances it would perhaps be a waste of time to notice articles of this character in the public press; but the editor of that journal occupies a position before the country that entitles his statements to credit. If he is in possession of the facts that he there charges, he should substantiate them before a committee of this House; and the members who are guilty of the conduct which he there charges should be known to the country. As the matter now stands, I cannot vote for or against certain propositions before this House without bringing myself directly under the charges made in that article. If there exists such a combination as is there stated, I want the country to know it; I want the House to know it; and I want the facts to go before the country. The character of that journal is such that, in my judgment, these grave charges should not be passed over in silence; and I therefore send to the Clerk a resolution which I offer in reference to this matter.

The resolution was read as follows:

Whereas certain statements have been published, charging that members of this House have entered into corrupt combinations for the purpose of passing and of preventing the passage of certain measures now pending before Congress: Therefore

Resolved, That a committee, consisting of five members, be appointed by the Speaker,

with power to send for persons and papers, to investigate said charges; and that said committee report the evidence taken, and what action, in their judgment, is necessary on the part of the House, without any unnecessary delay.

Mr. PAINE. I scarcely know, Mr. Speaker, whether to say anything in relation to this matter or not. I know nothing about the editor of that journal, or of the journal itself. I know nothing about any communication which has been made to that paper. I know not how its editor got his information. I know not whether what he says is true or false. But this I do know, that there has been a proposition made in this House, by a member of this House, upon this very subject. ["Name! name!"] I shall not name the gentleman at this time. It was with feelings of indignation that I heard the proposition. The reason I did not resent it was because it would have been a violation of the rules of this House. The reason I did not denounce it to the House was because, during the pendency of the struggle for the organization of this House, when a member rose in his place and stated to the House that a direct effort had been made to tamper with him in reference to the election of Speaker, the only credit he received for divulging that fact was that of being laughed at, and of being charged that he did not accept of the bribe merely because there was no such place as was offered to him.

I say now distinctly upon this floor, that there is not an entire want of truth in the allegations contained in that article; that a distinct proposition has been made by a member of this House, and in regard to the Minnesota land bill, that \$1,500 would be guarantied to a member for his vote for that bill; and when the committee is raised and I am called upon, I will give my evidence before the committee.

Mr. A. K. MARSHALL. I am extremely unwilling, Mr. Speaker, to base the action of this House in reference to this matter upon any charges contained in any newspaper of the day. I had determined to vote against the resolution offered by the gentleman from New York, as I gave no credit to the charges and allegations made in the article which has been read.

But the position which the matter has now assumed is totally different. A member of this House has announced upon this floor that there is truth in those charges, and that to him propositions of the character indicated in that article have been made, or at least that it is within his knowledge such propositions have been made. Upon this statement, and upon this alone, we ought to base our investigation; and I trust, therefore, that the gentleman who offered this resolution will change it in that respect. [Cries of "No!" "No!"] I do not want to bring the New York papers into that sort of respectability which a notice by this House would give them. I have no idea of giving to such contemptible things as appear in the newspapers of this country the sort of respectability they would obtain by receiving notice from this body.

But a member of this House has said that such charges are true; that corruption has been attempted by a member of this body; and upon that statement certainly there is enough to base this investigation, and upon that I desire to see it based.

Mr. PHELPS. I understand that the charges which have been read at the Clerk's desk, from the New York Times, are made in the editorial department of that paper. I learn that the editor of that paper is an ex-lieutenant governor of the State of New York; and when a gentleman of that standing makes the charges which are made in that editorial, I ask whether it is not worth our while to make inquiry into

that matter, as well as into the matter promulgated by the gentleman from North Carolina?

Mr. A. K. MARSHALL. It does not matter to me what position any gentleman may have held heretofore. I care not whether he be the ex-lieutenant governor, or the lieutenant governor, or governor of the State of New York. That character, whatever it may have been, is merged into that of the editor of a paristan newspaper. I look upon him in that light and in no other. He stands before this House as the editor of a newspaper, influenced and controlled by all the bias and interest which we know do control men in that position; and I ask this body whether it does not become them, their own dignity and their honor, to base the investigation upon such information as is given to them by a member of their own body, in preference to basing it upon an editorial in a newspaper, no matter whether it emanates from a governor or a lieutenant governor? He is but the editor of a newspaper, and I would not pay any man of that character the sort of respect which such action would seem to do.

I would state further, that if this investigation is to be gone into, there are other subjects which might be taken up. There have been other matters on which intimations have been made, and hints thrown out, besides this Minnesota bill. For my own part, I have voted against all these appropriations of land from beginning to end, and I shall continue to do so; but nobody suspects me anyhow. But, sir, I repeat that where a distinct charge of an effort to corrupt members of the House has been made—and that, too, not the first charge of the kind—and where that charge is sustained by declarations made by members of the House themselves, an investigation should be had; but I should wish that this resolution go so far as to cover all the ground, and let the committee be empowered to inquire into all cases of corruption attempted against the integrity of this body. If so, I will vote for it; and if not, I shall make an effort to introduce one.

Mr. CAMPBELL, of Ohio. During the past eight years, which it has been my lot to serve in this Hall, I have generally been here to vote on all important questions, by day and by night. I have voted invariably, with one single exception, for the grants of alternate sections of land to construct railroads in the valley of the Mississippi. I have given my reasons for doing so on former occasions, and I shall not detain the House now with a repetition of them. I have looked upon that district—the vast West—as a section of this country which had been woefully neglected by the Federal Government in the distribution of its favors.

We are startled now by the gentleman from New York [Mr. Kelsey] who sends to the Clerk's table to be read an editorial article from the New York Times, charging corruption upon this body in reference to railroad grants. The gentleman from Missouri [Mr. Phelps] attempts to dignify it with the idea that one of the editors is or has been a lieutenant governor of the State of New York. It is at best but an article of a newspaper. I have learned enough—you, Mr. Speaker, have learned enough, and every member ought to have learned enough, to know that it is not becoming in an American Congress—especially in a short session like this, when all the business affecting the great material interests of the whole country is at stake and in jeopardy, to stop to inquire into the truth of a charge which is based solely on the idea that some editor or assistant editor, or a newspaper penny-a-line-writer, has seen fit to malign the body. Although I have experienced within the last two years the weight of assaults of this kind, yet, occu-

pying the relations which I do to this body and to the country, I can not consent to the loss of time which an investigation, predicated solely on charges which some writer may make to the country, through the medium of manufactured rags, lamp black and oil, unless it comes before us in some responsible form.

Sir, it was but a day or two ago that I observed an article, published in the shape of a letter, purporting to come from a very distinguished man of my own State—the Comptroller of your Treasury—charging corruption, years ago, on Congress. It purports to have been picked up among the loose rags or waste paper of a paper manufactory establishment in Massachusetts. I have reason to believe that the letter is genuine. And yet, sir, I am unwilling to act upon such publications, and involve the Congress of the United States in the delay incident to the proposition of the gentleman from New York, on the mere assertion of a newspaper, although one of its editors may have been lieutenant governor of the Empire State. But the gentleman from North Carolina [Mr. Paine] has, by the remarks which he has made, put the matter on an entirely different footing; and I concur with the gentleman from Kentucky [Mr. A. K. Marshall] that, if the gentleman from North Carolina, or any other member of the House of Representatives, will assert here—and I understood the gentleman from North Carolina so to have stated—that he knows that corrupt propositions have been made in regard to a matter before Congress, there should be then an investigation. If, therefore, the proposition is to be planted upon the information given by the gentleman from North Carolina, in connection with the publication, I will vote for the resolution; but if it is to be predicated on the sole charge of a newspaper editor or correspondent, I will vote against it. I move to amend the preamble to the resolution by adding the words, “And whereas a member of this House has stated, on his own responsibility, that the statements published are not wanting in truth, therefore resolved,” etc.

Mr. ORR. I do not concur, Mr. Speaker, in the views presented by my friend from Ohio [Mr. Campbell]. I think there will be no unnecessary consumption of time in an investigation of the charges that have been so frequently made in the newspapers, in reference to corruption in Congress. I think perhaps it would be very well if they were all investigated; but I do not see how this House can, consistently with its dignity and self-respect, refuse an investigation in this instance, after the announcement which has been made by the gentleman from North Carolina [Mr. Paine]. It is due to the integrity of the body itself, and it is due to the character of our constituents, that the investigation should be made. I do not, however, desire that the investigation shall be as broad as the general terms of the amendment of the gentleman from Kentucky [Mr. A. K. Marshall] would seem to indicate; because the effect would be to extend it for months, and perhaps longer than this Congress itself will exist. I would prefer that the preamble of the gentleman from New York [Mr. Kelsey] should stand, amended by adding the statement of the gentleman from North Carolina [Mr. Payne] pointing to specific corruptions and charges.

Now, sir, if it be true, in point of fact, that the editor of the New York Times has information which justifies him in making the charges he has made, by pointing to that particular matter, the House will have the authority and the right to require that the editor shall come here and testify as to who the guilty parties may be.

I believe an amendment to the amendment is in order. I believe the amendment of the gentleman from Ohio is to strike out the original

preamble, and insert. I propose to amend the original preamble by adding to it what I send to the Clerk's desk.

The SPEAKER. The amendment of the gentleman from Ohio, as the Chair understands it, proposes to add to the preamble offered by the gentleman from New York.

Mr. CAMPBELL, of Ohio. That is the form in which I offer the amendment.

Mr. ORR. Then I misunderstood the amendment. What I desire is that the original preamble shall stand, and that the statement of the gentleman from North Carolina shall be added to it. I think that amendment should be adopted, and the resolution passed.

Mr. GROW. I agree with the gentleman from South Carolina [Mr. Orr] that a grave charge, directly made upon the integrity of a deliberative body, is a proper subject for that body to investigate. And I raise no question here as to the propriety of this investigation upon a direct charge coming from what source it may, involving the integrity of members of this body; it is due to ourselves, it is due to this body, that the investigation should be made, although I would not notice the charges ordinarily made in the newspapers.

Mr. HOUSTON. I desire to make a suggestion. I understand that the editorial which has been read is based upon a letter written by a reporter, who has a seat in this House under the permission and by the order of the House, and therefore the charge does not come within the ordinary scope of newspaper articles.

Mr. GROW. I have not sought the floor for the purpose of prolonging this debate, or of discussing the propriety of this investigation. My principle object is that an incorrect impression might not be made upon the public mind by a remark which fell from the gentleman from North Carolina [Mr. Payne], as a kind of excuse for his conduct. I desire that the matter referred to by him shall go to the country properly, and that the impression shall not be created that this House was ready to sit quietly under a grave charge made in reference to the election of Speaker, and seem to care nothing about such charges. Every member will recollect the circumstances as they then occurred. Both gentlemen involved in the charge were called to their feet and made their statements. And what took place? The House saw, from the statements themselves, that there was a misunderstanding between the two gentlemen as to whether the proposition had been made in jest, and was one of the passing jokes of the day, or whether it was serious. One of the gentlemen thought that it had a serious import, and the other denied that it had; and every member, taking the conversation as related by each of the parties, was justified in drawing the conclusion that it was a jest between the gentlemen—one of the playful pastimes of the morning; therefore the House did not dignify as a grave charge that which, upon its face, from the narrative of both the parties, was not a grave charge.

Mr. Speaker, I have no desire to raise any question with the gentleman from North Carolina or any one else. I simply desire to call attention to the exact facts as they occurred, so that the public mind shall not draw the inference that this House was willing to sit under charges of corruption upon the part of members, involving the integrity of this legislative body. I concur in the propriety of having this investigation. I merely desired to correct a false impression that might be created by the remark of the gentleman from North Carolina; and that is all I have to say.

Mr. RITCHIE. I wish to suggest a verbal amendment to the resolution; that the words "authority" and "responsibility" be stricken out.

The gentleman who proposed the amendment adopts the suggestion as a modification of it. The resolution will then read: "Whereas a member of this House has stated," etc.

Mr. BROOKS. Mr. Speaker, it is certainly a monstrous state of affairs that charges of the character stated should ever be made with reference to a coordinate branch of the American Congress; but it is all important to us, and to the dignity of the House of Representatives, that they should be squarely met and fairly investigated. Nor should the entire responsibility rest upon one individual. The House, as a body, should assume the responsibility. I therefore propose the following amendment, in the nature of a substitute for the resolution; and I feel it due to myself and my relations to you, sir, to say in advance, that, in doing so, I do not wish to indicate any manner of distrust of the Speaker, my only object being to throw the *onus* in the matter on the House itself:

Resolved, That a committee of five be elected on to-morrow at one o'clock, to investigate all charges of corruption which have been brought to the notice of this House; and that the said committee be empowered to send for persons and papers.

Mr. KELSEY. I rise to a question of order: that there is an amendment to an amendment already pending, and that the resolution is therefore not in order.

The SPEAKER. The resolution was read for information only; and the Chair sustains the point of order. It will be in order, however, when the pending amendment is disposed of.

Mr. WALKER. I am glad to hear that the proposition of the gentleman from South Carolina [Mr. Brooks] is not in order. In this matter I can have no distrust of the Chair. I take it for granted that the Speaker has just as lively a sense of the value of the integrity and honor of this House as any man in the country.

I take it that gentlemen have fallen into great mistakes in the running debate on this matter. Where charges are made involving impeachment of the fairness of our action, and the integrity of any man's vote, it seems to me that we lose sight of our own personal dignity if we pause to make inquiry as to the sources from which those charges emanate.

For myself, I care not whether the charge comes from the lowest and vilest of our species—from a mere miserable, dirty, partisan newspaper, or from a man of high character and position. This is a matter of no moment to me. Suffice it for me to know that the charge is made against me and my fellow-members. Therefore I think that the proposition made by the gentleman from New York [Mr. Kelsey] is the one upon which we should base our action.

If I understand the facts of this case, the charges are made in the editorial columns of the New York Times, based on a letter written to that journal by a reporter who has a seat upon this floor. My first impulse, as soon as I heard the communication read, was to rise in my place and move the expulsion of that reporter, without dignifying him by an investigation. But, sir, when his statements are indorsed by the editor and proprietor of that newspaper, and when there is coupled with it, if I may so speak, the more grave and serious charge made upon this floor by the member from North Carolina [Mr. Paine] hinting at the fact—a fact so disgraceful to any man occupying a seat in this Hall, that anything in the shape of a direct bribe had been made to corrupt a member here—I think that all this talk is idle.

But we must guard against this danger; do not make the resolution to create this committee so extensive as to protract this investigation

beyond the term of our session. Let our action be prompt and conclusive. For myself, I am prepared to vote for the proposition made by the gentleman from New York; and I am quite willing that the committee shall be appointed by the gentleman who presides at present over the deliberations of this House.

The SPEAKER. The Chair was in error in sustaining the point of order raised on the amendment of the gentleman from South Carolina [Mr. Brooks] by the gentleman from New York. There is no amendment pending in the second degree, and the amendment of the gentleman from South Carolina is therefore in order.

Mr. BROOKS. I submit the amendment, then; and I, at the same time, take occasion to say, after the remarks which fell from my friend from Alabama, that I am just as incapable of insinuating any distrust of the honor and integrity of the Speaker, as any member upon this floor. I say this in justice to him and to myself.

Mr. BRENTON. Mr. Speaker, it is due to myself that I should say something upon this question before it passes from the House in its present form. It is understood by every member of this House who desires to know anything in reference to the subject-matter of the charges in the communication which has been read from the New York Times, that that subject-matter is in my hands for investigation and report, and my hands alone, as a member of the Committee on Public Lands. I allude to a bill making a grant of lands to the Territory of Minnesota for railroad purposes. That question has been in my hands from the time it was taken up by the Committee on Public Lands. The committee have in some manner matured a proposition which they may or may not submit to this House. They have acted on it as they have acted on other questions. While they have received intelligence from men representing, or professing to represent, the interests of the Territory of Minnesota—men residing within the limits of the Territory, they have exercised their own judgments. They have acted independently on every proposition which has been submitted to them. Whether any influence has been exerted on any member of that committee to induce him to vote for or against the proposition, I know not; but I have this to say for myself, that no man, either in this House or out of it, has had the courage to approach me with any improper proposition to influence my actions one way or the other, nor dare any do it.

In the face of the charges in the letter which is the basis of the editorial in the New York Times, I say that I confine myself to my room when not engaged in my duties here; that I mingle not with the community; and that, so far as these charges concern the Minnesota land bill, but a single member of this House has called at my room to discuss the merits of that bill, and that call was made yesterday. These charges have no foundation in fact within the limits of my knowledge. I contend, then, that it is due to me personally, and the position I sustain to this proposition at the present time, that this investigation should be had—not because newspaper editors or correspondents choose to arraign members of this body, for if there is any class of individuals who should be treated by us with contempt, or, if not with contempt, with commiseration, it is those demented fragments of humanity that hang around this Hall merely for the purpose of gathering up every whisper and every word that may fall from the lips of a member, even in private conversation, and trumpeting it throughout the land.

Now, sir, if there were nothing else except what was found in the columns of the New York Times, or any other newspaper, in reference to this matter, I would not be willing to spend the time necessary to an

investigation; but the character which has been given to this question since it was sprung upon the House is one which demands at the hands of the members of this House a strict investigation, and that, too, in a summary manner, and I hope the investigation will be made.

Mr. CLINGMAN. I merely wish to say that there seems to be no difference of opinion in the House as to the propriety of this investigation, and I prefer that the committee should have as broad a field as these different propositions will allow them to have. I hope, therefore, that the original resolution and the amendment will be adopted.

I do not concur with the gentleman from South Carolina [Mr. Brooks] in the idea that we had better elect a committee. It would probably take us two or three days to elect a committee, and I have no doubt we shall get just as good a committee by the appointment of the Chair. I hope that amendment will not be passed.

Mr. PAINE. I do not know that it is necessary to vindicate the course I have taken here to-day. I stated, sir, what was the simple fact—a fact which is well known to every member on this floor—that soon before the organization of this House, at the commencement of last session, a member rose in his place, with honest indignation in his countenance, and charged that another member had undertaken to influence his vote by promising him a lucrative place upon a committee, and the only thanks he got was laughter, and an accusation that he would have taken the place if there had been one. I did not intend to impugn the integrity of the House. I was merely stating a fact, and I tell the gentleman that I never would have made the accusation against a member upon this floor, and during this Congress, after such an example as that. I stated that I did not announce the member's name at the time, because I believed it would be a fruitless task.

Some members have intimated that it may be that I did not hear the matter correctly; but I am sure that I did, and I have fortunately a depositary in the gentleman from Tennessee [Mr. SNEED], to whom I confided my own feelings and opinions within a few minutes after the occurrence took place. I went to him for the purpose of consultation upon the subject, and I intended to bring this thing out at the proper time, when the Minnesota bill should come up for consideration. The corruption was connected with that bill, and I should have exposed it in that connection; but as the subject generally was before the House I thought this the proper time to expose it, because I did not think there should be such a volume of indignation against the New York Times, when there was some ground for the accusations contained therein.

Mr. SNEED. I desired to obtain the floor, and made two or three efforts to do so, deeming it my duty under the circumstances. I desired to object to either of the amendments which have been offered, transferring the responsibility of the investigation, which I think ought to be made, from the basis assumed by the gentleman from New York, to a member of this House, upon a statement made by that member in debate. I deny the right or the propriety of this House so to act in regard to a subject-matter of debate by a member here. I know it was not the intention of the gentleman from North Carolina [Mr. PAINE] from the time this transaction took place in which he was unwillingly and unfortunately involved, to have taken this course, and to have assumed the responsibility of an affirmation of corruption upon a fellow-member, and a negation of it by that member, thus being placed in the category in which a member was placed at an early period in this Congress.

On the 23d of December last, the gentleman from North Carolina came to my seat and confided to me, in substance, what he has to-day stated to the House, asking my advice as to the course he should pursue. I instantly referred him to the case which had occurred at the commencement of this Congress, and without knowing what had been his course upon the proposition when it was made, I told him at once that, in my judgment, he was not bound by granting confidence to the communication which was proposed to him. He first told me that a member had come to his seat, and asked if he might have his confidence, and that he had granted it, not supposing that anything improper would be proposed.

Mr. PAINE. I wish to correct the statement. The member called me to his seat.

Mr. SNEED. That is of no consequence. It is an unimportant matter. I told him that, without compromising my own honor, I would not so repel the member as to prevent obtaining confirmatory evidence of the corrupt proposition; that I would await the obtaining of such evidence, and that I would then expose the member.

I said to him furthermore, that if no confirmatory evidence was obtained, and it was my case, I would slap the scoundrel in the face. And, sir, the member from North Carolina left me with the impression that that would be the course he would adopt in the emergency which had taken place. I then sat down at my desk and made a written statement of the communication which had then taken place between myself and the gentleman from North Carolina, because I knew, from the manner in which he spoke, that that was not the end of the transaction. It is that written statement which now enables me to give the date as the 23d of December. ["Read the statement."] No, I will not read it, because it is not necessary to do so. It is merely a memorandum of the communication made to me.

I say it would now be unjust to the gentleman from North Carolina to transfer the responsibility of the investigation to him, and thereby make him adopt the course which it was not his intention to adopt, upon a communication made by him to the House, which he could not, as an honorable man, have failed to make, under the resolution offered by the gentleman from New York.

Mr. ORR. The gentleman will allow me to say one word in this connection. It was not my purpose to throw any responsibility on the gentleman from North Carolina. I desired to see the amendment incorporated with a view of pointing the committee to the precise matters charged. That was the object.

Mr. SNEED. I trust that both these amendments will be withdrawn. Let the investigation take place; let the facts be given in evidence before the committee, and presented to the House in a tangible form.

Mr. Brooks withdrew his amendment.

Mr. STANTON. It is perfectly apparent that there can be but one result to this debate; and I can see no good that can arise from protracting it. After what has taken place, there certainly can be no doubt about the House ordering this investigation. With a view, therefore, of bringing the matter to a close, I move the previous question.

The previous question was seconded and the main question ordered.

The question was first taken on Mr. Campbell's amendment to the preamble of the resolution; and on a division it was agreed to—ayes 103, noes not counted.

The question was put; and the resolution, as amended, was agreed to.

On the following day the Speaker appointed Mr. William H. Kelsey, of New York; Mr. James L. Orr, of South Carolina; Mr. Henry Winter Davis, of Maryland; Mr. David Ritchie, of Pennsylvania, and Mr. Hiram Warner, of Louisiana, as the said committee, and on January 12 the preamble to said resolution was amended by striking out the words "now pending before" and inserting the words "during the present."

The resolution was then agreed to.

JANUARY 21, 1857.

[Globe, p. 403.]

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Mr. ORR. I rise to a question affecting the privileges of the House.

Mr. GROW. I rise to a point of order. My point of order is, that a question of privilege can not override the special order of the House, as the House is acting under a suspension of the rules of the House. If the Chair decide that it is in order, and overrides the special order of the House, and this day be taken up by the question of privilege, I ask the House to set aside another day for the consideration of territorial business.

Mr. ORR. I hope the request will be granted.

Mr. CLINGMAN. I object to setting aside another day now for the consideration of territorial business, for I presume that this question of privilege will not take up the whole day.

Mr. ORR. With a view of relieving the gentleman from Pennsylvania, I will give it as my opinion, that the matter which I propose to bring to the attention of the House will not be likely to occupy the day. I would not undertake to say that it will not. I do not think it ought to occupy any considerable portion of the day.

I am instructed by the select committee appointed to investigate certain charges of corruption, etc., on the refusal of James W. Simonton to give evidence before that committee, to submit a report, a resolution, and also a bill; and I shall ask the immediate consideration of the matter. I report first the resolution.

The SPEAKER. The House has ordered a select committee to investigate certain charges which affect, certainly, not only the question before the House this day, but any question before the House on any day; and that committee reports to the House that obstacles are thrown in the way of that investigation. The Chair thinks that the question of privilege overrides the special order.

The report was then read, and is as follows:

The select committee appointed to investigate charges that members of the House had entered into corrupt combinations for the purpose of passing and of preventing the passage of certain measures during the present Congress, respectfully submit the following special report:

That during the progress of their investigation they have summoned, as a witness, J. W. Simonton, the correspondent of the New York Times. That, among others, the following question was propounded to him: "You state that certain members have approached you, and have desired to know if they could not through you procure money for their votes upon certain bills; will you state who these members were?" And the said Simonton made thereto the following response: "I can not without a violation of confidence, than which I would rather suffer anything." In response to other questions of similar import, he said, "Two have made them direct, others have indicated to me a desire to talk with me upon these subjects, and I have warded it off, not giving them an opportunity to make an explicit proposition." To the question, "What do I understand you to mean when you say these communications were made direct?" Simonton replied, "I mean that, after having obtained my promise of secrecy in regard to them, they have said to me that certain measures pending before Congress ought to pay; that the parties interested in them had the means to pay; that they individually needed money, and desired me specifically to

arrange the matter in such way that if the measures passed they should receive pecuniary compensation."

The committee were impressed with the materiality of the testimony withheld by the witness, as it embraced the letter and spirit of the inquiry directed by the House to be made, but were anxious to avoid any controversy with the witness. They consequently waived the interrogatory that day, to give the witness time for reflection on the consequences of his refusal, and to afford him an opportunity to look into the law and the practice of the House in such cases, notifying him that he would, on some subsequent day, be recalled. This was the 15th of January instant. On Tuesday, the 20th instant, the said J. W. Simonton was recalled, and the identical question first referred to was again propounded, after due notice to him that if he declined the committee would feel constrained to report his declination to the House, and ask that body to enforce all its powers in the premises to compel a full and complete response. To that interrogatory he made the following reply, and we give it in full, that no injustice may be done to Simonton in this report. He said:

"Before stating the determination to which I have come on this subject, I desire to say that I do not here dispute the power of the committee, and I have not heretofore declined to answer that question upon any such ground. I have all respect for the committee and the House. I do not decline in order to screen the members; my declination was based upon my own conviction of duty. Since I was last before the committee, in deference to their judgment and wishes I have examined the case of *Anderson vs. Dunn*, to which they referred me, and have considered very fully what I ought to do in view of that decision as well as in view of other considerations. The result of my deliberation upon the subject has been to confirm me in the opinion that whatever penalty I may suffer I can not answer that question. I beg the committee to understand that I have no other motive whatever in declining but the simple one that I have stated before; that I do not see how I can answer it without a dishonorable breach of confidence. The answer to the question can by no possibility be supposed to reflect discredit on myself, and I presume that my statement of that motive is corroborated by the facts as they appear before the committee. *I must insist upon declining to answer that question.*"

The House will perceive that the foregoing statement shows the materiality of the testimony and the duty of the committee to insist upon its disclosure. It shows the settled and deliberate purpose of the witness to withhold such testimony rightfully and properly demanded, and the absolute necessity for the House to interpose with promptitude and firmness its authority, if it intended to expose and punish corruption which may exist among its members, by ordering the investigation your committee have been pursuing. It is due to the dignity and reputation of the American Congress to purge itself of such unworthy members if they have thus shamelessly prostituted their high and honored positions to such base purposes. The country has the right to know who have betrayed the trusts confided to them by their constituents. The honest men of the House should aid, by the exercise of all the powers with which they are vested, to secure the names of the supposed guilty parties, and thereby shield the general reputation of the body as well as their own characters from unjust and improper imputation and suspicion.

The committee consider it unnecessary to enter into an elaborate argument to establish the power of the House in this case. The summons issued under the hand of the Speaker and was tested by the Clerk of the House, and the contumacy of the witness is a contempt of that authority. If there is doubt whether this authorizes the arrest of the party in contempt, and his confinement until the contempt is purged, besides the right to inflict other punishment afterwards, it seems to your committee that none will question the authority of the House when they recur to the statute book. By an act passed May 3, 1798 (1 United States Statutes, 554), authority is given to the President of the Senate, the Speaker of the House of Representatives, a chairman of the Committee of the Whole, or a *chairman of a select committee* of either House, to administer oaths to witnesses in *any case under their examination*, and willful, absolute, and false swearing before either is declared perjury, and is punishable as such. Here is express authority to swear witnesses, and false swearing is punishable as perjury. Is it, then, no contempt of the authority of this House (and the committee are acting as and for the House in this investigation) for a witness to refuse to testify to material facts within his knowledge?

The committee concur unanimously in the opinion that the House is clothed with ample power to order the party into custody, there to remain until released by the same authority, or upon the expiration of the present Congress. The committee recommend the adoption of the following resolution:

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms, commanding him (the said Sergeant-at-Arms) to take into custody the body of the said James W. Simonton, wherever to be found, and the same forthwith to have before the said House, at the bar thereof, to answer as for a contempt of the authority of this House.

The question being on agreeing to the resolution—

Mr. ORR. I do not know, Mr. Speaker, that it is necessary I should say anything further. [Cries of "No!" "No!"] I ask, then, that the vote may be taken, and I will immediately afterwards submit a bill which I have been instructed to report.

The SPEAKER. The bill had better be submitted now, as part of the report. It will be apparent to the House, on the statement of fact read in the report, that when the resolution is disposed of, the report of the committee is disposed of. The bill, therefore, ought to be first read.

Mr. Orr thereupon reported, from the select committee of investigation, a bill more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony.

The bill enacts that any person who may be summoned as a witness by the authority of either House of Congress to give testimony, or to produce any papers upon any matter before either House, or before any standing or select committee of either House, and who shall willfully make default, or who, appearing, shall refuse to discover all the facts and circumstances within his knowledge when demanded, shall be, in addition to the pains and penalties now existing, liable to indictment as for a misdemeanor in any court of the United States having jurisdiction thereof, and shall, on conviction, be punished by fine not exceeding one thousand dollars, and not less than one hundred dollars, and by imprisonment in the penitentiary for not less than one month, and not more than twelve months.

The second section enacts that no person examined, or testifying before either House of Congress, or before a committee of either House, shall be held to answer criminally in any court of justice of the United States, or shall be subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify before either House or committee, and as to which he shall have testified, whether before or after the date of this act; and that no statement made, or paper produced, by any witness before either House of Congress, or the committee of either House, shall be competent testimony in any criminal proceeding against such witness in any court of justice; and that no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he may be examined, for the reason that his testimony, or the production of such papers, might tend to disgrace him or otherwise render him infamous.

Mr. MILLSON. I observe, Mr. Speaker, from the reading of the report of the committee, that the witness declines answering the questions propounded to him, on the ground that the communications made to him by members of the House were confidential, and that he regarded it as a breach of confidence to answer the questions propounded to him by the committee. I wish to know of the gentleman from South Carolina whether the investigations of the committee have disclosed the fact that this witness was the author of those revelations which were published in the newspapers, reflecting on the integrity of members of this House; and whether he has assigned any reason to the committee for making these general charges, and committing this general breach of confidence in the publication of these communications, when he seeks to protect himself from answering questions on the ground that that would be a violation of confidence?

Mr. ORR. I do not think it proper, Mr. Speaker, to disclose any more of the testimony of the witness than I have been instructed to disclose

in the report. The report states that the witness who is in contempt, in the judgment of the committee, is the correspondent of the New York Times; and the House will remember that this investigation had its origin in certain articles contained in the editorial columns of that paper, and in its correspondence.

* * * * *

The resolution was then agreed to by yeas 164, nays 16. (Globe, p. 404.)

The Speaker stated that the question recurred on the bill reported by the select committee "more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony."

The bill was read a first and second time.

Mr. RITCHIE. I move the following amendment as a proviso to the second section.

Provided, That nothing in this act contained shall exempt a witness from prosecution and punishment for perjury committed by him in giving his testimony when required as aforesaid, or for forgery committed by him of any matter he may produce.

Mr. ORR. The gentleman's amendment may be necessary. I did not suppose it was. I do not think the bill, as it is now, would exonerate from prosecution any party committing perjury before any committee of this House; but in order to put the matter beyond doubt, I hope the amendment will be adopted.

Mr. RITCHIE. I concur in the opinion of the gentleman from South Carolina; but I propose the amendment in deference to expressions of doubt on the part of members of this side of the House.

Mr. ORR. I offer the amendment indicated by the gentleman from Pennsylvania. I desire to make a few remarks explanatory of the bill, and when I shall have done so, if there be any point upon which gentlemen desire to ask for information, if I have it in my power, I will furnish it. It is not my purpose to demand the previous question. I intend to discharge my duty as a member of the select committee, and the House will be left, in its good judgment and conscience, to discharge its duty.

Mr. COBB, of Georgia. Before the gentleman from South Carolina proceeds, I desire to give notice of an amendment which I shall offer to this bill; and I do it now, in order that he may have it before his mind while he is addressing the House. The object of the amendment is to put beyond doubt the power, upon which gentlemen now differ in the House, in reference to our right to imprison witnesses refusing to testify or produce papers before one of our committees. A minority of this House do not believe that power exists without the passage of a law, or the adoption of a rule upon the subject. I think that while the majority hold a different opinion, they ought, in deference to the views of the minority, to place this matter beyond doubt. Put it upon the statute book, and then, I apprehend that, should cases hereafter arise, there would be no difficulty in obtaining a unanimous voice in this House for the exercise of a power which I believe Congress possesses, but which it can not exercise without the passage of a law, or the adoption of a rule. I shall introduce this amendment as an additional section, if an opportunity be afforded me before the bill is finally acted upon:

And be it further enacted, That in case any witness shall refuse to testify or produce papers, when summoned as hereinbefore provided, before the Senate or House, or any committee of either House, such person so offending may, by order of the House whose authority he resists, be imprisoned in the jail of this District for any time not exceeding six months."

The SPEAKER. The Chair desires to present to the House a question in reference to this bill; and with the consent of the gentleman from South Carolina it will be stated. The bill is submitted to the House as a subject of privilege, and the Chair thinks it is so. But this question is presented: The bill is in terms an act of general legislation; it is based upon facts which exhibit the difficulties encountered by the committee in obtaining information in a specified case referred to that committee. The report is intermediate and not final, and the Chair suggests a doubt whether a bill presented as an intermediate measure ought not to be confined to the specific case before the House. The doubt of the Chair is suggested upon the phraseology of the concluding clause of the resolution, which is in these words: "And that said committee report the evidence taken, and what action, in their judgment, is necessary upon the part of the House." Such construction may be given to this clause as to afford the committee power to report a general bill, but such report should be at the conclusion of the investigation. A bill reported upon a statement of facts which show that such action is necessary to obtain information in this case as an intermediate proceeding ought, perhaps, to be confined to the case immediately before the House. An additional suggestion may be made. If admitted as an act of general legislation, it may compel members to vote against a proposition to obtain necessary information in a specific case, or to accept an act as a general law.

Mr. ORR. In reply to the suggestion of the Chair, I have to say that the committee may not be able to proceed in their investigation so as to report the facts to the House, unless such a bill is passed to give us authority to bring witnesses before us, and to inflict a greater punishment than the committee believe the House possesses the power to inflict.

Some gentlemen say the very fact of presenting this bill is an admission that the House has no power upon this subject, and that it negatives the resolution which we have already adopted. No such thing. The power of the House, I believe it is conceded by all, in reference to the punishment which it can impose for a breach of its privilege or for contempt, terminates with the adjournment of Congress. It terminates upon the 4th of March; and the committee are satisfied that if the House exercise all the power which the majority on this floor claim that it can exercise, that will be insufficient to extort testimony from unwilling witnesses. That is the position in which we are placed, and that is the reason for the necessity of this special report from the select committee.

The SPEAKER. The question made by the Chair has no reference to the merits of the bill, or its necessity, but only as to its limitation to this particular investigation, rather than making it a bill of a general character.

Mr. QUITMAN. I rise to a question of order. I believe that the Speaker has truly decided that this is a general bill, and intended to act prospectively, and therefore I am opposed to all this rapid legislation to cover a particular case, and especially to the rapid passage of a bill of such immense importance to the privileges of the people of this country, as well as to the privileges of this House. I move that the bill be referred to the Committee on the Judiciary.

The SPEAKER. The motion is not in order at this time.

Mr. KENNETT. I rise to a question of order. If I understand the decision of the Chair, it is not in order to consider this bill at this time.

The SPEAKER. The Chair does not decide that point. The Chair has

made a suggestion simply whether the bill ought not to be confined to the subject under investigation, it being an intermediate proceeding, and not a final report. If the question be raised, the Chair will submit the question to the House, whether a bill of general legislation, at an intermediate stage, be in order as a matter of privilege.

Mr. KENNETT. If I am recognized by the Chair, I would make a suggestion to the gentleman from South Carolina in regard to this matter. I shall be compelled to object, and insist upon the point of order, that the bill is not properly under consideration, if he presses it now; and I suggest that he permit it to go the Committee on the Judiciary, with instructions to report forthwith. They can perfect the bill and return it.

Mr. ORR. Does not the gentleman from Missouri perceive that if the select committee found it necessary in order to carry out the investigation with which they are charged by the House, to submit this bill, if it fail, the investigation to that extent must fail? Does not the gentleman perceive that whenever this bill is referred to a committee, and when that committee has to await the regular time for it to report, the bill can not get back before the House and Senate in time to enable the committee to avail itself of the benefits of the provisions of this bill? I said to the gentleman that I did not propose to move the previous question. I will not. I propose to leave that to the discretion of the House. If the gentleman desires to make a motion to refer the bill he can do so; and if there be a majority of the House thinking that the bill should be referred, they may so vote and so order.

Mr. KENNETT. If the gentleman permits me, I will say one word. This day, with yesterday and tomorrow, has been specially set aside for Territorial business. I believe that we may take up the week in discussing and in attempting to perfect this bill here in the House. I therefore ask that, to save time, it may be referred to the Committee on the Judiciary, with instructions to perfect it and report it forthwith. I have already made a motion to that effect.

The SPEAKER. The gentleman from Missouri had not the floor to make the motion.

Mr. ORR. Do I understand that the question of order is made?

The SPEAKER. The question of order is not yet made.

Mr. COBB, of Alabama. Allow me to ask the gentleman from South Carolina a question. Can the committee not bring forward a bill applicable to the present case, and then offer a general bill?

Mr. ORR. That will not answer the purpose of the committee.

Mr. WASHBURN, of Maine. Will the gentleman from South Carolina allow me to make a suggestion to him?

Mr. ORR. I can not yield the floor again until I shall have finished my statement, unless I have to do so on a question of order. The object of the bill reported by the committee is to give additional authority, and to impose additional penalties on a witness who fails to appear before an investigating committee of either House of Congress, or who, appearing, fails to answer any question. Now, sir, I do not propose to state what has transpired in committee, but I can suppose a case, and that is this: That when a witness is brought to a particular point—to material facts within his knowledge, with reference to the combinations which we are charged to examine into, he folds his arms, and says to the committee: "I decline to answer that question, because it will criminate myself." Well, sir, that would, in the opinion of the committee, be a sufficient reason why the witness should not be called upon to answer the question. Now, sir, I submit that it would

be the result of the merest accident in the world if we should ever find a single witness who could testify to a single fact of an improper influence brought to bear on members of Congress without, in that testimony, implicating himself.

I call the attention of the members of the House to an act which was passed in 1852—an act the title of which is “to prevent frauds on the Treasury of the United States.” It is declared by the sixth section of that act that if “any person or persons shall, directly or indirectly, promise, offer, give, or cause or procure to be promised, offered, or given, any money, goods, right in action, bribe, present, or reward, or any promise, contract, undertaking, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever to any member of the Senate or House of Representatives of the United States after his election as such member, and either before or after he shall have qualified or taken his seat, or to any officer of the United States, or person holding any place, etc., he shall be liable to indictment as for a high crime and misdemeanor in any court of the United States having jurisdiction for the trial of crimes and misdemeanors, and shall, on conviction thereof, be fined, not exceeding three times the amount so offered, promised, or given, and shall be imprisoned in a penitentiary not exceeding three years. And the person convicted of so accepting or receiving the same or any part thereof, shall forfeit his office or place, and shall be further disqualified from holding any office of honor, trust, or profit under the United States.”

Mr. Speaker, who make these combinations? Are they made in market overt? Are they made in the presence of witnesses? Are they made in the open face of day? Are they not usually made secretly and clandestinely, with a view of preventing exposure? And who knows of these arrangements? Who knows of these bribes and rewards that may be tendered to members of Congress? The parties making them themselves. And how is the House and the country ever to put a stop to anything of the sort if a witness, when he is called by an investigating committee to testify his knowledge as to these facts, shall fold his arms and say, “I decline to answer that question, because it would criminate me?” The bill which I have reported requires the party to answer, but as a matter conforming to the general features and principles of the laws of this country in most of the States and of the United States, the second section of the bill provides that the person thus testifying in that particular case shall not be liable to the pains and penalties of this act in consequence of his having given that testimony. That is a provision of the bill.

Now, Mr. Speaker, how else can you get the testimony? You may say that if you get the testimony of a party implicated it is suspicious of itself—that the testimony should be received with allowance. I have no doubt that any committee which this House, or any other House may raise, or that the members of the House themselves would attach whatever weight was due to the testimony of such parties; but you can not get the proof in any other way than that indicated by this bill requiring them to testify.

As to the necessity of the first section of the bill. Suppose a witness fails to attend, what is the remedy? We pass a resolution such as we passed this morning, or such as we passed the other day. Some gentlemen do not believe that either House of Congress has any authority at all to proceed against a defaulting witness. But suppose you exercise that authority—as the House has done in one instance of

a witness making default, and in another instance of a witness refusing to answer material questions—and bring a contumacious witness to the bar of the House. He makes his statement, if you choose. The House considers that the excuse which he tenders for his contumacy is insufficient, and the House orders him into the custody of the Sergeant-at-Arms. Until when? Your power to punish for any contempt committed against the authority of the body of which you are members, expires unquestionably when the commission of the members constituting that body expires. Of that there can be no doubt. A question might be raised on that point in the Senate of the United States, where a majority of the Senators hold over four years from the particular time when a matter of this sort should transpire. But in this House, where the commissions expire, there is no doubt on that question. I believe that no one has ever held that the House has authority to go beyond the limitation of the term for which the members are elected in punishing witnesses for contempt of the authority of the House. Is that punishment adequate? What would be the term of the imprisonment? Take the case we have had before the House, and the imprisonment under its order could not be more than five weeks. I do not know who are the parties whom this witness can implicate. I do not know whether he deals justly and truly by them or not. I do not know whether he is entitled to credit or not. I do not know but what the parties supposed to be implicated by this witness may be able to relieve themselves from all suspicion. But suppose they are not—suppose they are involved to the extent of hundreds and thousands of dollars, how much, then, might they afford to pay to a defaulting or recusant witness, in consideration that he would undergo this punishment?

The necessity of it is illustrated by another case which I may suppose. Suppose that two days before the adjournment of this Congress there is a gross attempt on the privileges of the House by corrupt means of any description; then the power of this House to punish extends only to those two days. Is that an adequate punishment? Ought we not, then, to pass at once a law which will make the authority of the House respected; and, in addition to that, after this bill had passed, this House will turn these matters over to the courts—tribunals which have the time, education, and facilities, for investigating such charges? This House can not undertake to constitute itself a court to determine all these things, because it would consume too much of its time. Our entire session might be exhausted by them if there were a series of contempts.

Some have suggested to me that this law is *ex post facto* in its operations. It is no such thing. The bill provides that no persons called before that committee to testify before them shall be subjected to criminal prosecution for any offense they may have committed and for which their testimony would furnish the basis of an indictment. I am free to confess that as a member of any committee I should act as if I were a judge, and unless there was some legislation like that proposed I should not insist on an answer from a witness who, in answer to an interrogatory, said he could not answer without giving evidence which would subject him to indictment and prosecution. If, however, we do insist on a change of that general rule of evidence we should in some way relieve the witnesses from the penalties which might otherwise be imposed on them. The law extends not only to such persons as may be examined hereafter, but to such persons as have already been examined by the select committee, so as to put all whom the committee may bring before them on terms of equality. Can there be objection to this?

Is there any good reason why it should not be so? But gentlemen say it is *ex post facto* in its operation. It is no such thing. If the law is passed the witness, concerning whom a resolution was adopted this morning, could not be proceeded against under it for what has transpired. If the committee deem it their duty to force this witness to give testimony on this particular point and he should refuse to do so, then there would be an original proceeding and the committee would commence *de novo* with him. It would not be *ex post facto* in his case; it would not be punishing him for an offense which did not exist at the time it was alleged to have been committed.

Now look at the ground on which this witness stands. He says that he received the communication in confidence. There can be no confidence that is in contravention and violation of the supreme law of the land. None whatever; and if a man feels that there is so much of personal degradation that he can not violate confidence even to protect the supremacy of the law, let the consequences of that sublimated virtue which he may be supposed to possess be visited, and visited properly and severely, upon him. I undertake to say that if the bill reported by the committee be passed by this House you will have no further trouble in this or in the other House in securing the attendance of witnesses to prove these charges if proof exist. The House ought to lend every aid in its power to any committee to ferret out and smoke out any such corruptions as are charged. This especially ought to be the case with the charge made by the correspondent of the New York Times. His statement is that two members of this House made direct propositions to him to secure money for their votes to pass certain bills pending before Congress. He makes the charge explicitly and distinctly. He declines, however, to give testimony on that point before the committee. This is a strange sort of confidence. He says confidence was reposed in him, and that he can not break the seal of that confidence. Yet it was not confidential enough to keep him from publishing all the facts to the world, in this way casting suspicion on every man in this House; when, according to his own statement, only two made propositions to him directly and distinctly. I feel that I am not one of the men he speaks of; and I suppose there are two hundred and thirty-two members on this floor who feel that they are not implicated by his statement. Who, then, are the guilty ones? I have a right to know; the House has a right to know; my constituents have a right to know; the constituents of every member here have a right to know. I protest against my being suspected. I protest against my associates being suspected. But when I attempt to extract from the witness the names of the parties implicated, he shelters himself by declaring that the communication to him was a confidential one. I want power from this House to extract the facts from that witness. I want this House to authorize the select committee to compel the disclosure of such facts, and to see whether the confidence he alleges is so sacred in his estimation as to be kept even at the sacrifice of imprisonment in the penitentiary for twelve months. If this be done I undertake to say that there will be no more refusals to give testimony before committees of this House.

I believe I have stated all the provisions of the bill. It is what the committee desire to be enacted into law. They feel that it is necessary. They do not feel that the House has not the authority—and they they do not wish any such inference to be drawn—but they feel that the authority is inadequate to secure testimony from unwilling witnesses.

As I have stated, I will not call for the previous question. I have done my duty toward the select committee in submitting the report

which has been read. The committee have done their duty. The bill is before the House. It embraces but two simple sections. They are brief, and easily to be understood. Gentlemen can readily make up their minds on them. To be effective, the bill must be passed speedily. If it is to go through other committees, and then go on the Calendar—if it is to be subjected to all the delays which we know are incident to all bills referred to committees, then we shall not have the benefit of its provisions in the investigation now going on by order of the House. Then a witness who knows material facts will have the alternative presented to him, whether it will not be better to undergo six weeks of imprisonment which the House can order, than make the disclosure demanded. On the 4th of March the power of the House will end. We want additional power.

Mr. STANTON. I intend to give my vote to aid this committee in their investigations as far as I can do so consistently with my convictions of what I owe to the public. Here is a bill unquestionably of very great importance, involving the exercise of very delicate powers by this House. Two amendments are proposed to it—one by the gentleman from Pennsylvania [Mr. Ritchie], and another suggested by the gentleman from Georgia [Mr. Cobb]. I desire to read this bill, and to criticise its language, before I am required to vote yea or nay upon its passage. I do not understand that it is essential, after the passage of the resolution which you have already adopted, authorizing the proper officer to bring the witness before the House, and subjecting him to the process of contempt—I say I do not understand that it is essential that this bill be passed to-day or to-morrow; but, sir, it is essential—and I agree with the gentleman from South Carolina in that—that this bill shall be kept within the control of the committee and House, and that it shall not be subject to take its place upon the Calendar, and in committee to abide by the rules of the House. I have the utmost confidence in the committee which has reported the bill.

Mr. STANTON. I was going to make a suggestion which I think will answer as well. I desire to have no revision, by any other committee, of the doings of this select committee. I have as much confidence in it as I have in any of the standing committees, or of any special committee which has ever been appointed by the House. Inasmuch, therefore, as this is a select committee upon the privileges of the House, with power to report at any time, I will move that this bill be recommitted to the select committee, together with the amendments, and that the bill and amendments be printed. The committee can then return this bill with their action upon the amendments at any time they think proper. In the mean time, the bill being printed, every gentleman will have an opportunity of reading it and making up his own judgment upon it. I submit the motion.

Mr. H. MARSHALL. I move that the bill be referred to the Committee on the Judiciary, and that that committee have power to report at any time. I have no idea of the Committee on the Judiciary being over-slaughed in this style.

The SPEAKER. The question will first be put upon the motion to refer the bill to the Committee on the Judiciary, and then upon the motion to refer it to the select committee.

Mr. ORR offered the following resolution, which was read, considered, and agreed to:

Resolved, That in the absence of A. J. Glosbrenner, Sergeant-at-Arms, on business of the House, it is ordered that W. G. Flood, clerk of the Sergeant-at-Arms, be authorized and directed to execute the orders of the House, directed to the Sergeant-at-Arms during the absence of the said Sergeant-at-Arms.

Mr. DAVIS, of Maryland. Mr. Speaker, it is to me, of course, entirely immaterial to which committee, if to any, this bill shall be referred. The select committee regard themselves as nothing more than the hand of the House, to make an investigation upon which the House itself will ultimately pass. They have reported this bill, conferring upon them no more power than they now have, but simply referring to the courts of justice of the country the enforcement of measures which are necessary for the accomplishment of the purposes for which they have been appointed. They have no desire to prevent this House from the most ample consideration of the bill; and having reported it themselves unanimously, they of course can not anticipate that there will be any reason why they should shirk any consideration the House may be inclined to give it. On the contrary, they invite consideration; and they desire to state as their judgment that they have now, in the honest performance of the duties cast upon them by the House—disagreeable and unpleasant, and which gentlemen of the committee would most cheerfully shun, did they feel that their sense of duty would allow—in the discharge of their duties they have come, under the law under which they now act, the common law adopted by the act of 1800, and made applicable to this District, to a dead stand. And the question now before the House is, whether they will, by the passage of this law, or some other law having in view the same object, remove the obstacle which arrests the progress of the committee, or allow the investigation to fail?

We have had more than one witness before us from whom we could extract nothing, because of legal difficulties which we feel ourselves bound to regard. A report has been made to this House that one witness has come before the committee, stating that propositions have been made directly to him on the precise subject which we are directed to investigate, but that some perverse principle of honor prevents him from making a disclosure, as if obedience to the law of the land, the disclosure of every corrupt proposal, and aiding in purifying the legislation of this House, were not a duty in law and in morals higher than any pledge given advisedly or unadvisedly.

We then find ourselves without power to proceed. We do not ask the House to confer any power upon the committee at all. The committee is not named as the instrument which is to apply any penalty, or as the judge which is to decide any fact. The bill consists of two sections perfectly simple, and, in my judgment, those which are necessary to the occasion and do not go beyond the occasion. The first only makes a contumacious act a refusal to answer a question truly or falsely (for a false answer is still an answer, and subjects the party to the penalties of perjury for his false answer), an act which is to be punished not by the committee, not by the House, not by any revolutionary tribunal created and acting without the formality of law, but under a law previously passed by the Congress of the United States, with all the guards of the Constitution, with all the protection of existing law, with a jury sworn, a judge to expound the law, and a President to see to its proper execution. It is, therefore, no question relating to a summary interposition, but it is merely a question whether the rule of law laid down in the section is right.

Do gentlemen tell me that a year's confinement in the penitentiary, and a fine of less than \$1,000, is a punishment inside of the enormity of the offense of a witness refusing to answer a question, which he already states he can answer, touching the purity, the honor, the dignity—aye, sir, the honesty of this House, in reference to a charge which

discredits every member of this House, and which tends to break down the moral authority of the law of the House? Will they allow men in your lobby by your authority to go about with their tongue thrust in their cheek at the impotence of the investigation—to go about the city and say that for twenty years it has been so that no man could get justice done to him here except by bribery? Is it too much exercise of authority to say that a man who knows these facts shall spend his year in the penitentiary, and pay his fine, or else shall tell what he knows? I say to gentlemen who think that this is too severe a punishment; that it is the only process by which we can purge the honor of the House and vindicate the honor of the people. I have different notions from theirs with regard to the aggravation of the offense. A man goes and steals a horse, steals a dog, or steals a mere chattel worth over \$5, and he is sent to the penitentiary for five years by the law of this District, as administered every day; and we are to be told that the prevention of an investigation of great frauds and villainies which defame and degrade the legislation of the country, which give to the course of public affairs a different direction, which make fraud and bribery and secret influence the reasons of our legislation, is not to be and can not be punished by us. I hold that the punishment proposed by this bill is mild—is moderate. This is a matter which touches the very dignity, and, ere many years, will touch the very existence of the Republic.

Then what is the other section? It is nothing more than repealing an act of Congress passed within the last four years. It is nothing more in its legal effect. Prior to the act of 1853, read by my friend from South Carolina [Mr. Orr], it was not an indictable offense known to the law to bribe a member of Congress. It was no offense known to the laws of the country to make any combinations to sell their constituents for money, for place, or for dignities.

At this juncture the assistant to the Sergeant-at-Arms appeared at the bar of the House and announced to the Speaker that, in obedience to the command of the House, he had arrested James W. Simonton, esq., and had him then at the bar of the House to answer.

The SPEAKER. Unless the House shall otherwise direct, the officer of the House will take the person held in custody before the select committee.

Mr. H. MARSHALL. The person in custody has been before the select committee, and the vote of the House this morning was on a proposition that, by his action there, he was in contempt. Now, it becomes the duty of the House to decide what they will do in the case of the contempt. If he contumaciously refuse to testify, then it is for the House to take action. The committee can do nothing.

Mr. ORR. I would suggest that the course indicated by the Speaker be taken, so as to give the witness the opportunity of purging his contempt before the House shall be called upon to pass upon his case.

The SPEAKER. It is competent for the House to give the case such direction as it may choose.

Mr. ORR. I am requested by the party in arrest to propound the inquiry to the Chair whether he is at liberty to address any question to the Chair?

The SPEAKER. Certainly not.

Mr. BURNETT. When the resolution was introduced into this body for the purpose of issuing this order to the Sergeant-at-Arms—

The SPEAKER. The Chair must suggest that no question is before the House. The resolution of the House is exhausted when the offender is presented at the bar.

Mr. BURNETT. I understand that action is to be now taken by the House as to the disposition to be made of the person in custody.

The SPEAKER. The Chair has already suggested that the officer hold him in custody and take him before the committee of investigation, unless the House give some other order.

Mr. BURNETT. I rise to a question of order. I deny the power of the Speaker to issue such an order, and for that I wish to give my reasons. A select committee of this House, appointed by this body, has introduced a resolution here in which it sets forth certain facts. What are those facts? They report to this House that, in obedience to the resolution adopted by this body, they have caused to come before them the party here brought in by the Sergeant-at-Arms; that they propounded certain questions, in accordance with the resolution adopted by the House, and for the purpose of carrying out the investigation——

Mr. CLINGMAN. I rise to a point of order. What question is before the House?

The SPEAKER. There is no question before the House.

Mr. CLINGMAN. Then I object to the gentleman proceeding.

Mr. H. MARSHALL. Has the Speaker decided what is to be done with the party in custody?

The SPEAKER. A resolution has been adopted directing an officer of the House to make an arrest. The person arrested is brought to the bar of the House. The Chair has suggested that, unless the House otherwise direct, the officer of the House shall present him before the select committee.

Mr. BURNETT. I submit that the Speaker of this House having issued his order to the Sergeant-at-Arms, and the Sergeant-at-Arms having executed that order and brought the person in custody to the bar of the House, the Speaker has no power to dispose of him, and he is within the control of the House.

The SPEAKER. The Chair does not undertake to dispose of him.

Mr. CLINGMAN. I understood the Chair to decide that there was no question before the House.

The SPEAKER. There is no question before the House.

Mr. CLINGMAN. Then I object to this proceeding.

Mr. JONES, of Tennessee. I submit this question to the Chair: This order of the House has been recited in your warrant to the Sergeant-at-Arms——

Mr. BURNETT. I object to the Speaker assigning the floor, when I did not yield it.

The SPEAKER. The gentleman from Kentucky was not entitled to the floor, as there was no question before the House.

Mr. BURNETT. I was entitled to the floor, and desired to make a motion.

The SPEAKER. The gentleman from Tennessee has the floor on a question of order.

Mr. JONES, of Tennessee. I wished to state that the resolution of the House adopted this morning, as recited by the Speaker in his warrant to the Sergeant-at-Arms, directs him (the Sergeant-at-Arms) to take into custody the body of the said James W. Simonton wherever he was to be found, and the same forthwith to have before the said House, at the bar thereof, then and there to answer the said charge. Now, sir, the officer has executed your warrant; he has brought the body of the person here in custody, for the purpose—as the resolution and as your warrant says—of answering that charge. I submit to this House whether it is now within the power and jurisdiction of the Speaker to

order the Sergeant-at-Arms to take this man out and keep him in custody an indefinite period of time?

The SPEAKER. The Chair made no decision at all on the question.

Mr. JONES, of Tennessee. He is here to answer the charge.

Mr. BURNETT. I rise to a question of order.

Mr. JONES, of Tennessee. I want to submit this question of order: That the person is here, and if he is willing to answer the charge he has the right to do so under your resolution.

The SPEAKER. The Chair has suggested that the House may take such order as it chooses on this question.

Mr. BURNETT. I desire to move that the party in custody be heard.

The SPEAKER. It is competent for the House to direct its proceedings.

Mr. BURNETT. I suppose I have a right to state the reason of my motion.

The SPEAKER. It is debatable.

Mr. BURNETT. The special committee have reported certain facts to this House? What are they? They have reported that they have gone on with their examination in obedience to the order of the House, and that on reaching a certain point a witness by the name of Simonton refused to answer interrogatories, which I admit are legitimate and such as he should have answered; and having reported thus, they asked this House to adopt a resolution empowering the Speaker to issue his warrant, directed to the Sergeant-at-Arms, to bring the party referred to in his custody to the bar of the House. A majority—a large majority—have adopted that resolution. When the resolution for this investigation was introduced originally I voted in its favor at every stage. The considerations which controlled me at that time were these: If there had been corruption on the part of members of Congress—if there were members so forgetful of their oath under the Constitution, and their duty to their constituents and the country, as to sell their votes on certain measures of legislation, it ought to be known; and being known and proved, the members guilty of the offense ought to be expelled. There was none who would have gone further to ferret out those guilty of such offenses than myself. There is none more ready to do so now. But when this morning that special committee reported a resolution asking of the House the exercise of the highest power known to any tribunal—the deprivation of a citizen of his liberty—before I could vote for it I wanted to know the law upon which it was predicated. I wanted to see the statute of the country which authorized the exercise of such power by this body. Sixteen members voted in the negative. A great majority of the members voted that we had such power. The accused is at the bar of the House, in the custody of the Sergeant-at-Arms. If he refuses to answer, where is your power to punish him for it? Will you send him to jail? [Many cries of “Yes!”] Where is the law for it? Where is your power to deprive even the humblest citizen of his liberty? The gentleman from South Carolina referred to the statute prescribing punishment for perjury; yet the law referred to does not authorize the exercise of the power claimed by the gentleman in this case. I admit the power of the House to call witnesses before its committees; but there is no tribunal in the country which can deprive a citizen of his liberty and inflict punishment on him without provision of express law. For this offense there is no express provision of law. The committee, by their report, admit it; and, in order to supply this omission, have introduced, with their report and resolution, a bill. Sir, I have no sympathies for the accused. He richly merits punishment. His conduct before the

committee has been insulting to them and the House; and if it were a question of doubtful exercise of power with me, I might have voted with the majority; but with my convictions of the powers of this House, if I had so voted I should have violated my convictions of constitutional duty.

The courts in the different States all exercise the power to punish contempts. Is it done without authority of law? Is it a power incident to their organization? Or is it only exercised in accordance with law? If gentlemen will look to the different States they will find that this power is exercised either by express statute or in accordance with the common law, and *never otherwise*. The legislatures of the several States may exercise this power, unless expressly deprived of the right by the organic law of the States; for they can exercise all the powers of government not forbidden. But, sir, how is it with us? We can only exercise such powers as are expressly granted, or incident to those expressly granted. When we examine the question of the privileges of this House, we must first look to the Constitution; and we there find that the express grants of privileges are very few. What are they? Exemption from personal arrest; exemption from question elsewhere for what is said in the House; and power over our members and proceedings. For the exercise of these powers no statute is necessary, the Constitution being the law. But, sir, there is another power conferred; and if it had been exercised, we would have had no difficulty in this case. We have the power to make all laws necessary and proper for carrying into execution the powers vested in us by the Constitution. This power, with the express grants enumerated, confers upon Congress full power to pass a law punishing a witness for contempt. Congress has failed to exercise this power, and we are now called upon to deprive a citizen of his liberty in the absence of any express law warranting it.

I would now call the attention of the House to the views of Mr. Jefferson upon this very question, and I refer them to his Manual, pages 55 and 56:

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise. In December, 1795, the House of Representatives committed two persons of the name of Randall and Whitney, for attempting to corrupt the integrity of certain members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was detained in confinement a fortnight, and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House of Representatives voted a challenge given to a member of their House to be a breach of the privileges of the House; but satisfactory apologies and acknowledgments being made, no further proceeding was had. The editor of the Aurora having, in his paper of February 19, 1800, inserted some paragraphs defamatory of the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted, in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defense; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying them into execution are given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State legislatures exercise the same power, and every court does the same; that, if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and, by noise and tumult, render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. To this it was answered that the Parliament and courts of England have cognizance of contempts by the express provisions of their law; that the State legislatures have equal authority, because their powers are plenary; that they represent their constituents completely, and possess all their powers, except

such as their constitutions have expressly denied them; that the courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws adopted in each State, by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them, directly, exemption from personal arrest, exemption from question elsewhere for what is said in their House, and power over their own members and proceedings; for these no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, *e. g.*, for the punishment of contempts, of affrays or tumults in their presence, etc.; but, till the law be made, it does not exist; and does not exist, from their own neglect; that in the mean time, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own Sergeant, who may appoint deputies *ad libitum* to aid him (3 Grey, 59, 147, 255), is equal to small disturbances; that in requiring a previous law, the Constitution had regard to the inviolability of the citizen, as well as of the member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offense. But if one branch may assume its own privileges without control, if it may do it on the spur of the occasion, conceal the law in its own breast, and after the fact committed, make its sentence both the law and the judgment on that fact; if the offense is to be kept undefined, and to be declared only *ex re nata*, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment, the condition of the citizen will be perilous indeed.

These were my reasons for voting against the resolution adopted this morning.

The committee also report a bill to the House, and ask immediate action on it. Without time or opportunity for examination, we are required to exercise powers of the highest and most delicate character. I am willing to go as far as the furthest man on this floor, to pass laws requiring witnesses to give testimony, or, in the event of their refusal, to punish them. I will vote for such a law. But I am not prepared to pass into law a bill suddenly sprung upon us, and without opportunity for investigation, which has for its object to punish a party for a contempt he has already been guilty of. He is here, and he can only purge himself before the House; and gentlemen are mistaken if they imagine he can purge himself by sending him before the special committee. He can not do it. He has already been guilty of the contempt.

I have not given this case the thorough examination which it deserves. I have only desired that my constituents might know the reason which influenced me in voting against the resolution reported from the special committee by the gentleman from South Carolina, to arrest this party and bring him to the bar of the House.

The SPEAKER. The question immediately before the House is the motion of the gentleman from Kentucky, that the person under arrest be heard.

Mr. DAVIS, of Maryland. I ask the gentleman to let me offer a substitute for his proposition.

Mr. BURNETT. I desire that there shall be a thorough investigation; and inasmuch as a majority of the House have decided that we have the power to bring this party here and to punish him for contempt, I do not desire to interfere with the action of the House, and shall therefore withdraw my motion that the person under arrest be heard. My object in making it was to have an opportunity of giving the reasons which influenced my vote on the resolution reported this morning.

Mr. DAVIS, of Maryland. We must dispose of the prisoner in some way. He is before this House in a position analogous to a person

before a court by process of attachment when it is alleged the witness has been guilty of contempt. The next step, when the witness has been brought in, is that he be called on to show cause why he shall not be committed for the contempt which is alleged. I therefore propose the following resolution:

Resolved, That the Speaker do call on the person in custody to show cause why he should not be committed for his refusal to answer the questions propounded by the select committee in the report of the said committee; and that he have until to-morrow morning to make said answer; and that in the mean time he remain in the custody of the Sergeant-at-Arms.

Mr. COLFAX. I agree with the gentleman from Maryland in one thing; and that is, that the witness having stated that there were members of this House who had approached him with propositions for the sale of their votes, should have answered the questions propounded to him by the select committee. But he is an American citizen. He stands here at your bar, and has the right, before he is confined for even an hour, to be heard, either by himself or counsel. And I move to amend the resolution by striking out all after the word "*Resolved*," and inserting: "That he shall have the privilege of being heard at the bar of this House, in person or by counsel."

Mr. WASHBURNE, of Illinois. I do not understand that the resolution prevents the party from being heard at this time. It only gives him the privilege, if he desires it, to have until to-morrow morning to prepare himself.

Mr. H. MARSHALL. It is of importance that this House shall proceed with some degree of correctness in the important case before it. The resolution offered by the distinguished member from Maryland [Mr. Davis,], is not proper, in my opinion, for our adoption at this stage of the cause. It is not sustained by analogy to the practice of courts of justice in cases of attachment for contempt of the authority of the court, after the party has been brought into the presence of the court upon the attachment. The resolution of my friend is like a rule *nisi*; but it is now too late for that. The writ of the Speaker might have been framed like a rule *nisi*; or to show cause why he should not be attached. The House preferred another course, and made the attachment peremptory. The witness was not allowed to give bail for his appearance here; but the Sergeant-at-Arms was ordered to take him into custody wherever to be found, and to keep him so as to produce his body here at the bar of the House, to answer for the contempt of the authority of this House by refusing to testify before the select committee, or rather to respond to a question propounded by the committee. The Speaker's writ has performed its office. Mr. Simonton is here in custody of the officer, and has been yielded by that officer to the House. He stands here accused—*already attached*—for a specific offense, and he has a constitutional right to be heard in his defense, and, should he prefer it, to be heard *now*. To resolve now that he shall show cause, if any he can, why he should not be attached, is evidently not the next or the proper step. He *is* attached, and he is here, under the attachment, a prisoner at the bar of the House. It only remains for the House to pass upon the attachment it has ordered. It is within the competency of this House, if he purposes now to testify as required, to send him before the committee to give that testimony; and then, after he has given it, you are to adjudge the terms upon which you will let him off. If he does *not* propose to testify, there remains no question here except for the House to adjust the damages; that is, to determine what penalty you will impose upon him for his recusancy. It will be a continuing pen-

alty. We may demand of him every morning whether he is ready yet to answer. For one, I am ready to imprison him until he does answer.

When I cast my vote for issuing the writ upon which the prisoner was arrested, I did so because I considered that, if the House had authority to subpœna the witness *ex necessitate*, it had the right to compel obedience to the subpœna, and therefore the right to punish for a contempt of its authority when lawfully exerted. The House has the right, from necessity, to protect itself then —

Mr. BURNETT. I wish to ask my colleague a question. He says that *ex necessitate* this House has the power. Now, sir, I want him to tell me from what power conferred upon Congress he derives the necessity for the exercise of the power to commit? Where is the original power?

Mr. ORR. I would call the attention of the gentleman from Kentucky to an act passed in 1798, and previous acts authorizing the summoning of witnesses. That act authorized the chairmen of the respective committees, the Speaker of the House, and the President of the Senate, to administer oaths; and in a subsequent session it makes false swearing perjury. Now, if the House does not constitute this tribunal a court for this purpose, I do not understand it, and I do not suppose that the proposition would be denied that any court has power to punish for contempt from necessity, usage, or precedent.

Mr. H. MARSHALL. In reply to my colleague, independent of the statute referred to by the gentleman from South Carolina, I say that the power of the House to issue the Speaker's writ was decided in Anderson's case; and that if the House, through the Speaker, may issue the subpœna, the rest of the exercise of power proposed flows as a necessary incident to the power to require the production of the testimony. It is inherent in every body legally constituted, and necessary for its own self protection. The point made by my colleague would have been more apposite when the House proposed to raise the select committee. A charge of bribery and corrupt combination to effect legislation is made. Has the House the power to inquire into it? If it has not, then it is indeed defenseless even to protect its own members or its own dignity, or the honest purposes for which a House assembles under the Constitution. If it has the power to inquire, and may command the appearance of a witness, it has, from necessity—from the implication flowing from the power to subpœna, the right to compel the witness to testify. I think that this view is sustained by the precedents, and every analogy drawn from the practice of courts of justice, as well as from parliamentary history. But I arose, Mr. Speaker, only to say that the resolution of the member from Maryland ought not to be the step taken by the House, because in this proceeding it would be returning upon our steps, and questioning the power we have exerted. Let us have no rules *nisi*. The recusant witness is at the bar of the House, and he has a constitutional right to be heard. He may testify under the order of the House, and now purge the contempt, so far as he now can; or, in my opinion, it only remains for the House to proceed to the pronouncement of its judgment in his case, and so to the vindication of its own authority in this matter.

Mr. MILLSON. It seems to me that the rules of proceedings which we ought to adopt are very plain and simple. I do not think that we ought now to go into the inquiry, what power we have to punish this man for this alleged contempt. That is a question to be determined when the case comes up for consideration; and I suggest to gentlemen, with all due respect, that they are adopting the rule of Rhadamanthus, when they propose to condemn first and hear afterwards.

This is not the time to go into the inquiry, what power we have to punish for contempt of the House. The accused was brought into court—brought before this court of Congress for the very purpose of answering to the complaint made against him, and that suggests the natural order of proceeding. He is arrested by the Sergeant-at-Arms; he is brought here; it is presumed he knows not for what. The very moment he is brought before this body to answer the accusation, it seems to me to be the province of the Chair to make known to him that accusation, by reading to him the report of the committee and the resolution of the House—the indictment, so to speak, which has been preferred against him—and then, when he is made acquainted, without any delay, with the reasons for which he is brought here, inquiries should be addressed to him if he is now ready to answer the charge? If he is now ready to answer, then another question presents itself to the House, and that is, whether the House is now ready to proceed to the consideration of the charge?

Now, sir, it does not follow as a matter of course that because the person taken into custody is ready to reply to the accusation, therefore the House is bound upon the instant to proceed with the accusation. It is analogous to every other case of prosecution, civil or criminal. The readiness of one party does not, *perforce*, compel the other party to be ready. I then suggest that we ought not now to go into the inquiry, whether we have the right to punish this individual for contempt of the House. The House made no such determination as that suggested by the gentleman from Kentucky [Mr. H. Marshall.] The House came to no such resolution. In voting for that resolution, I did not mean to affirm that it was in the power of the House to inflict punishment. I left myself entirely uncommitted upon that subject. I will state, however, that unless I shall be convinced in the progress of this case that we have no such right, I shall be, for one, disposed to exercise it. But we have not yet committed ourselves to any such doctrine.

We have simply determined that, after having summoned this man to appear before the committee for the purpose of testifying, the House owes it to its own dignity to inquire why he did not testify, and as to its own power of punishment. That is the question to be determined now, and it ought not to be prejudged, before the accused is heard in his own defense, by the announcement of confident opinions as to the extent of the authority of this House. I then think, Mr. Speaker, that the person in custody, who is presumed to be ignorant of the reasons for which he is brought here, should be informed what it is that he is called upon to answer; why it is that he has been taken into custody; and whether he is to be allowed to be heard in his own defense or not at this time will depend upon the judgment of the House. If the House be ready now to proceed to investigate, it will determine to do so. We should not refer him to the committee. They have no further control over him. They have made their report to this House; and if he be sent to the committee to testify, and refuse, it will require a new report from that committee, and a new proceeding before this House, before he can be again arrested for, perhaps, a second refusal to testify before them.

Mr. TRIPPE. I understand, Mr. Speaker, that the proposition now before the House is the resolution offered by the gentleman from Maryland [Mr. Davis], with an amendment proposed by the gentleman from Indiana [Mr. Colfax], to postpone the further regulating of this question until some designated hour to-morrow, with the privilege to the

party arrested of being heard, either by himself or counsel. I should like to have the resolution read.

The resolution and proposed amendment were again read.

Mr. TRIPPE. It is now in order, I presume, to offer an amendment to the amendment; and I offer the following in the nature of a substitute:

Whereas James W. Simonton has been arrested by the Sergeant-at-Arms, under an order of this House, for an alleged contempt of its authority in refusing to answer questions proposed to him by a select committee of this House, it is

Ordered, That the said James W. Simonton be and appear at the bar of this House at 1 o'clock to-morrow, to answer said charge of contempt, by himself or counsel, or both; and that in the meantime he be held in the custody of the Sergeant-at-Arms, and that a copy of this order be furnished by the Clerk and served by the Sergeant-at-Arms on said Simonton.

Without knowing anything about this matter, or about the party in custody, but with an eye to the course of justice in this matter, I think it due to him, or to any other person in his position, to give at least the time proposed by the resolution of the gentleman from Maryland, if he desire it. I do not know whether he desires it or not. If he does not, I suppose the House is ready to act upon the case.

Mr. COBB, of Georgia. With the permission of my colleague, I would suggest to him and to the gentleman from Maryland who introduced the proposition, to amend the resolution so that it should read in this manner: "That immediately the Speaker shall proceed to read to the accused the action of the House on the subject, and that then he be permitted to respond at once, or that time be given till 12 o'clock to-morrow to make response." That brings the question directly before the House, informs the party, gives him time if he wants it, and disposes of him at once if he wants no time.

Mr. ORR. I have prepared a resolution which embodies substantially the suggestion of the gentleman from Georgia last up. It is in these words:

Resolved, That the Speaker do forthwith inform J. W. Simonton of the charge on which he has been arrested, and propound to him the question, "Are you ready to show cause for the said alleged contempt, and do you desire to be heard in person, or by counsel, now or at what time?"

Mr. TRIPPE. Will it be in order to withdraw my amendment to the amendment, if I offer to accept that?

The SPEAKER. It will be in order.

Mr. TRIPPE. Then I withdraw it, and offer this.

Mr. COLFAX also withdrew his amendment.

Mr. STEPHENS. I suggest that it should be made to read: "show cause why he should not be committed."

The modification was accepted.

Mr. CARLILE. I move the previous question.

Mr. WARNER. Will the gentleman withdraw his call for the previous question for a moment?

Mr. CARLILE. As I understood that the gentleman from Georgia [Mr. Warner] is a member of the select committee, I withdraw the call for the previous question, if he will promise to renew it. I think, however, that the House has already consumed more time than is necessary in this case.

Mr. WARNER. Mr. Speaker, I have a few words to say in relation to this report. As is well known to you, sir, and to this House, a committee of investigation was appointed, charged with a specific duty. That committee have endeavored to discharge that duty to the best of their ability. They have made a special report to this House, and stated the grounds on which it is predicated. The first question is,

was it based on sound principle? Was this witness in contempt of the authority of this House in refusing to answer the question which was propounded to him? That is *the* question. The committee thought that he was. He stated that he knew certain facts implicating members of this House, which came within the legitimate inquiry of the committee, but refused to give the names of the parties, because it would violate confidence reposed in him. Now, if this House had the power to originate and order this committee, then it follows, as a necessary legal consequence, having done so, that that committee had power to make the proper and legal investigation which was devolved on them by the House. This much in regard to the power of the House.

Gentlemen say that they were in favor of this investigation, and voted for it. They thought it was proper that it should be made. It has been ordered. When the committee undertake to execute the order of the House, and to elicit the fact they are charged to investigate, obstacles are thrown in the way by a witness summoned before them refusing to testify. We ask for such measures to be taken as are known in every court before which proceedings are had. We are told that the committees of this House have no power to enforce a witness to give testimony which the House ordered should be taken. What is the character of this investigation? It is one which involves the honor, the dignity, and the character of this House. When I use these terms, I use them with a full sense of their meaning and import. I repeat, sir, without pretending to say more at present, that it involves the *honor*, the *dignity*, and *character* of this House. When we sought to avail ourselves of the legal and proper means to execute the order of this House by compelling a witness to come before the committee, and to disclose the very fact we were directed to inquire into, and he has refused to do so, we say that he is in contempt of the authority of this House. So we have reported upon the state of facts presented to the House. Now, was it a contempt of that authority when he refused to answer the questions propounded to him by the special committee? Can he be justified in law or morals for refusing to answer them? Was it a privilege of his to refuse to answer them, in which he was protected by the law? If it was, then he was not bound to answer, and he was not in contempt of your authority. If they were legal and proper questions, then, by refusal to answer, he is in contempt of the authority of this House, which ordered the investigation. The House either had authority to order it or it had not. If it had the authority, it had also the power to enforce answers from witnesses. Otherwise the order is a mere *brutum fulmen*. It comes to that, and nothing more, when you order an investigation, and a witness refuses to obey your order, and are told that you have no power to enforce his obedience, or punish him for contempt.

Let us see whether he was privileged. To enable me to do that, I turn to Greenleaf on Evidence, a standard authority. It will be perceived that the only ground on which he places his refusal to answer is, not that his answer will criminate him, not that it comes within the scope of a privileged question in law, but simply because he will reveal a *confidential* communication. I undertake to say that when he is called on to answer, not only when individual rights are concerned, but especially when great public interests are involved, he is bound to make revelation—no matter how sacred the confidence which may have been reposed in him. The authorities go so far as to embrace confessions made to a minister by a prisoner for the ease of his soul, or to a Catholic priest for the remission of his sins. The minister or the priest

is not obliged voluntarily to go to a magistrate and report what he has heard; but when called on to testify he is bound to disclose the fact. In the first volume of Greenleaf on Evidence, I find the following:

"Neither does the rule require any regular *retainer*, as counsel, nor any particular form of application or engagement, nor the payment of fees. It is enough that he was applied to for advice or aid in his professional character. But this character must have been known to the applicant, for if a person should be consulted *confidentially*, on the supposition that he was an attorney, when in fact he was not one, he will be compelled to disclose the matters communicated.

"SEC. 242. This rule is limited to cases where the witness, or the defendant in a bill in chancery treated as such, and so called to discover, learned the matter in question only as counsel, solicitor, or attorney, and *in no other way*. If, therefore, he were a *party to the transaction*, and especially if he were party to the fraud (as, for example, if he turned informer, after being engaged in a conspiracy), or, in other words, if he were acting for himself, though he might also be employed for another, he would not be protected from disclosing; for in such a case his knowledge would not be acquired solely by his being employed professionally."

"Though the law of England encourages the penitent to confess his sins, 'for the unburthening of his conscience, and to receive spiritual consolation and ease of mind,' yet the minister to whom the confession is made is merely excused from presenting the offender to the civil magistracy, and enjoined not to reveal the matter confessed, 'under pain of irregularity.' In all other respects he is left to the full operation of the rules of the common law, by which he is bound to testify in such cases, as any other person, when duly summoned. In the common law of evidence there is no distinction between clergymen and laymen; but all confessions and other matters not confided to legal counsel must be disclosed when required for the purposes of justice. Neither penitential confessions made to the minister or to members of the party's own church, nor secrets confided to a Roman Catholic priest in the course of confession, are regarded as privileged communications.

"SEC. 248. Neither is this protection extended to *medical persons*, in regard to information which they have acquired confidentially, by attending in their professional characters, nor to *confidential friends, clerks, bankers, or stewards*, except as to matters which the employer himself would not be obliged to disclose, such as his title deeds and private papers, in a case in which he is not a party."

The committee thought this witness was not privileged, according to law, from answering the questions propounded to him, and they therefore insisted upon his answering. He refused. The committee did not act hastily. They gave the witness three or four days to reflect upon the subject. He took time to reflect upon it, and the result of that reflection was that he still refused to answer, and thereby placed himself in contempt of the authority of this House, which had ordered this specific investigation. That was precisely his position, and the committee reported him to the House.

Well, sir, how does it stand now? He is reported to this House by the committee as being in contempt—for what? Because he had refused to answer an order of this House. Still, what has this House done? This House has ordered his arrest. Why? Because they considered him in contempt of its authority. That is precisely the condition in which he now stands. If he was not in contempt, this House ought not to have ordered his arrest. The very fact that the House has ordered his arrest presupposes that he was in contempt of its authority. The committee had no power to arrest him. They reported the facts to the House for its action. They reported their opinion upon the facts; and the House, upon that opinion and the facts disclosed, has ordered his arrest, thereby holding that he is in contempt of its own order and authority. Now, what will you do with him? You have had him arrested to get him before you. Why did you arrest him? Because he stood in contempt of your order—because he refused to answer questions which you have the legal right to require him to answer. He can purge himself of that contempt at any moment. He may do so now. He can state to this House that he will go before the committee and answer the question.

What question? The question which this House has ordered him to answer, and declare that he is bound to answer. This House could not have ordered his arrest upon any other ground. They could act upon no other authority. They had no right to order his arrest unless they believed him guilty of a contempt of its authority; and being arrested, he stands before the House as a witness acting in defiance of, and in contempt of, its authority and order; and he can only purge himself of that contempt by going before the committee, and making proper and satisfactory answer to such legal questions as have been, or may be, propounded to him. That is all I have to say at present about the witness's position before the House.

I call the previous question.

Mr. DAVIS, of Maryland. I ask the gentleman to withdraw the call for the previous question.

Mr. ORR. I have, Mr. Speaker, made a slight modification of the resolution which I have offered, and I ask that it may be read.

Mr. DAVIS, of Maryland. I wish, by the courtesy of the House, to put in a substitute for the resolution I originally presented.

The SPEAKER. It is in order for the gentleman to modify his own resolution.

Mr. Davis's resolution, as modified, was read, as follows:

Resolved, That the Speaker do read to the person in custody the proceedings of the House touching the alleged contempt of the prisoner; and do call on him to show cause why he should not be committed for his refusal to answer the questions propounded to him by the select committee; and that he have leave to be heard now, or to-morrow at 1 o'clock; and that he have the aid of counsel, if he desire it; and that in the meantime he remain in the custody of the Sergeant-at-Arms.

Mr. Orr's amendment (accepted by Mr. Trippe), as modified by him, was then read, as follows:

Resolved, That the Speaker do forthwith inform J. W. Simonton of the charges upon which he has been arrested, and propound to him the question, "Are you ready to show cause why you should not be further proceeded against for the said alleged contempt; and do you desire to be heard in person, or by counsel, now, or at what time?"

The previous question was then seconded; and the main question ordered to be put.

The question was taken upon Mr. Trippe's amendment (suggested by Mr. Orr), and it was agreed to.

Mr. Davis's resolution, as amended, was then agreed to.

The Speaker ordered the assistant to the Sergeant-at-Arms to present the body of James W. Simonton.

The officer obeyed the order; and Mr. Simonton, standing in the main aisle of the House, was addressed by the Speaker, as follows:

James W. Simonton, you have been arrested by order of the House, and now stand at its bar charged with an alleged contempt of its authority and privileges, in refusing to answer questions propounded to you by a select committee appointed to make investigations to certain charges made against the honor and character of the House. The report of the committee on which the order for arrest has been made will be read to you, and I shall then, by order of the House, address to you interrogatories, to which you will answer as you please.

The report of the select committee was read by the Clerk.

The SPEAKER (addressing Mr. Simonton). The resolution which has been read to you has been adopted by the House; and by virtue of its authority you have been arrested, and now stand at the bar charged with the offense which has been stated to you. Are you ready to show

cause why you should not be further proceeded against for the said alleged contempt; and do you desire to be heard in person, or by counsel; and, if you desire to be heard, whether now, or at what time?

JAMES W. SIMONTON. Mr. Speaker, if consistent with the views of the House, I should be glad to occupy their attention for a few minutes; and then, if the House deem it necessary to proceed further, I would like an opportunity to consult and employ counsel. May I proceed?

The SPEAKER. It is your privilege to be heard now on the charge made.

Mr. LETCHER. I understand that this person is here to answer questions, and not to make speeches; and I insist on his answering the questions. If he is not ready to answer he should not have indulgence.

The SPEAKER (after repeating the question). It is stated to the Chair and to the House, that he desires to be heard now. Unless the House shall otherwise direct, the Chair will hear the statement.

Mr. SAVAGE. I rise a point of order. I concur with the gentleman from Virginia, that this person is brought here for the purpose of answering questions, and not of making speeches. I believe that the House in passing this resolution passed it with the idea that the same course was to be pursued as would be pursued in a court of justice; and that this man, in making his answers, was to be controlled by those principles and precedents which would obtain if he were standing before a tribunal for the purpose of answering for a similar offense. Now the practice is universal, that the party is not to answer orally, but always in writing and on oath. I think that that is the only legitimate way in which he can answer for a contempt—on oath and in writing—not by speech.

The SPEAKER. The gentleman from Tennessee raises a question of order, that the person now at the bar of the House has not the right to make his remarks, but must be confined to an immediate answer to the interrogatories addressed to him by the Chair; and further, that the answers must be in writing, and can not be made orally. The Chair is of opinion that the answers to the interrogatories must be direct; and that extended remarks can not be allowed; but thinks that under the order of the House, the answers can be given orally, and not necessarily in writing.

Mr. GROW. It is the privilege of the accused anywhere in an American court to answer questions in his own manner—

The SPEAKER (interrupting). Debate is not in order.

Mr. GROW. I move that the accused be heard in answer to the questions in his own mode and manner.

The SPEAKER. The motion is not in order at this time. The House has made an order. That order is in process of execution; and after the order shall have been executed, the House may take any other course it may deem proper, under the circumstances.

Mr. H. MARSHALL. We are still a House here in session. I want to make a motion supplementary to the order and not in contravention of it at all. I propose, as the further order of the House, in the execution of that now performing, that the party make his reply in writing.

[Cries of "Oh, no!"]

The SPEAKER. The Chair thinks that the proposition of the gentleman from Kentucky, being consistent with the order of the House, is in order.

Mr. ORR. Is it in order after the witness has proceeded?

The SPEAKER. He has not proceeded; he has only expressed his wish; but he has not answered the interrogatory.

Mr. GROW. I move to amend by adding the words "or orally, as he may desire."

Mr. ORR. I rise to a question of order. The House has adopted a resolution instructing the Speaker of the House to propound certain interrogatories to the party under arrest, which are to be answered by him. When that resolution was pending, the House incorporated in it, it is to be presumed, everything it desired. The subject, then, has for that purpose passed beyond the control of the House. When adopted it was our rule of action, and it is now too late to amend or alter it unless on a reconsideration.

With reference to the witness, if he says he desires to go on now, I insist that he shall have a right to the fullest defense he chooses to make. It is his privilege to do so. If he desires to be heard by counsel, and wishes a postponement of this hearing to a future day and hour, I am willing to grant it. If he goes on now to make remarks outside of answers to questions, he will then lose that privilege.

Mr. H. MARSHALL. Was there ever a time when a witness was brought into court to purge himself of a contempt, that he was not required to speak on an affidavit? Is this party to purge himself orally, and not under oath? Is he to purge himself of contempt by making a speech?

The SPEAKER. Certain interrogatories were directed to be propounded to the party in arrest at the bar, but there was no order whether the answers were to be given in writing or orally.

Mr. H. MARSHALL. I want them to be given in writing, and under oath.

Mr. WASHBURN, of Maine. I call for the execution of the order.

Mr. STEPHENS. This party is not before this House to purge himself of contempt. In that the gentleman is mistaken. He is here to show cause why he should not be proceeded against by the House as in contempt, and he has the right to make any showing in reply to that he pleases.

The SPEAKER. The Chair will submit the question to the House. "Shall the answers to the specific inquiries of the House addressed to the prisoner at the bar be made orally?"

The question was decided in the affirmative.

Mr. STANTON. I rise to make an inquiry. Are the answers, now about to be made, the answers on which the House is to act, or are they merely preliminary answers?

The SPEAKER. The Chair can not determine. J. W. Simonton, I am instructed to propound to you the following interrogatories: "Are you ready to show cause why you should not be further proceeded against for the said alleged contempt; and do you desire to be heard in person or by counsel; and, if so, whether now or at what time?" You are at liberty to answer them orally.

James W Simonton addressed the House as follows: Mr. Speaker, I am ready to answer, and to answer now. I beg the House to believe that I have no vain ambition to appear before them at this time and in this manner. I am no speaker; I am no lawyer; I am a member of the press; and though unaccustomed to address public bodies or meetings, I stand here with a firm reliance on the correctness of the positions I have taken, and a full conviction that I am pursuing the path of duty; and I trust I shall pursue it, according to the convictions of my conscience, to the end. I have very little to say, and I shall say it briefly as I can.

I think that gentlemen who have addressed the House to-day in regard to this matter have made some mistakes of fact. They were unintentional I know; and I am happy to have this opportunity to say that I complain not at all of the gentlemen of the committee, for they have treated me with uniform kindness. They are executing an order of the House according to their convictions of duty, and it is not for me to complain.

One of the mistakes I refer to, and a radical one, is this: They have presumed, and so stated to the House, that this investigation depends on something which I have written or published. I beg here to repudiate that presumption altogether. Gentlemen must be aware, if they look at the circumstances surrounding the adoption of this resolution, that it has no such basis. If they will go further, and take the letter published in the New York Daily Times of January 6, over the initial of my name, they will find that it contains nothing which would justify any such proceeding. A gentleman rose in his place and moved a committee of investigation, based on general rumors and statements in the press—not mine alone. I think that, without exception, every member of this House who took the floor on that occasion, declared that he placed no reliance on newspaper statements. Each and every man sneered at the press, and said the House was not to look into statements made by those who conducted it. An honorable gentleman rose in his place and vindicated the moral convictions which I had expressed, and *then* the House came forward as one man, and ordered an investigation.

I submit, then, that the investigation is not based upon anything which I have said or written, and that its responsibility for proof rests not upon my shoulders.

I wish to say one word more, as preliminary to the excuse or apology I have to make for the position I occupy, in regard to the power of Congress or of the House; for it must be remembered that as an American citizen I am entitled to make my conduct comport with the law, and that no man, and no body of men, can sustain the proposition that I am to be treated as independent of law. So it will be perceived that my action in the premises is to be judged *by the law*, as I understand it, or as it is decided to exist. I had believed that this House had no just power to punish for contempt.

Gentlemen have suggested an argument to show an opposite state of facts. They have read to you the law of 1798, and one of more recent date, which give to a committee certain judicial powers; and upon that basis they assume that they have *all* the power of the judiciary, and they assume the right to hold me, a free American citizen, in custody, not according to "due process of law," but upon a mere *ipse dixit* of this House. They seemed to have overlooked the fact that, even admitting that the committee have judicial powers for certain purposes, they have *not* the judicial powers of a court in all respects. And if their argument is good for anything, it must be good to show that they have any and every power of a court; they must have the power of a grand jury to find an indictment; they must have the power of a petit jury to find a verdict, and they must have the power of a judge to pass sentence!

They have overlooked still another fact, and that is, that courts of law do not derive their power of punishing for contempt from any loose and general idea of rights; and that the laws creating them, and giving them the power, make its existence clear and unquestionable.

I have great respect for the House and for the committee, as I have already stated in my answer. I was not desirous of placing myself in

conflict with the House; but I am before you; and I stand here protected by that provision of the Constitution which declares that no man shall be deprived of his liberty except by due process of law. If I am now, at this hour, deprived of my liberty, by any "due process of law," why does not some gentleman rise here and show the law? Will any man contend that the Constitution of the United States intended that the House should have the power in a specific case already before it to make a law applicable to that case? Surely not.

I am charged, Mr. Speaker, with inconsistency in having promised a confidence which I refused to violate, and yet with having stated to the committee that I had knowledge of certain specific facts. Now, I think that injustice has been done me in that suggestion. There is no evidence that I have made charges implicating members of this House. I am not aware, if it is so, that the committee have one particle of proof—and I maintain that they have not such proof—that I have made charges for which I am responsible here.

But as to this matter of confidence. As I have stated, gentlemen came to me and bound me to secrecy. I accorded the confidence unreservedly, not knowing what they had to communicate—whether an important public document—important to my readers; whether it was an important fact to control or affect my own judgment in regard to the discharge of my duties, or whatever it might be. I had the right, I maintain, to receive their confidence for my own purposes. I have not volunteered any charges against anybody which should make it necessary that I should violate that confidence. Your committee have asked me sundry questions. They have insisted that I should make statements to them which I told them would not be legal evidence when given. They said to me, that "whatever is stated here which is not legal evidence, of which we shall be the judge, we will not make public." Then I am relieved from the charge of making statements, to go out to the world, which I am not ready to establish by oath or by evidence of circumstances. I have not stated in general terms in this letter [holding up that published in the Times of the 6th instant], or in others which the House might make the basis of action, that "Congress" is corrupt. I have never made specific charges, so that any member here should feel that he ought to rise in his place and say these charges refer to me—or that he has the right to ask me. "Do you refer to me?" If I have, let the committee show it.

What I have done is this: Having been convinced that corruption did exist—having a moral conviction of that fact—and I venture to assert that scarcely a gentleman upon this floor is without the same moral conviction—having this moral conviction, I have felt it, as a member of the press, my right and my duty to denounce it *upon* such moral conviction. Sir, it is a matter more than of right; it is a question of duty. You have a responsibility to your constituency; I, as a member of the press, have mine to a constituency. I have moral convictions, and I have made statements which, in terms as I have stated, were based upon "moral conviction" alone. The New York Daily Times, in the very editorial article which was read preceding the appointment of this committee, distinctly stated that these things could not be proved; and in saying that, it declared quite as distinctly that we had no legal evidence. I went before your committee, and I stated to them, not only that the answer to the question which they propounded to me would be no legal evidence if I should give it, but that, having kept myself clear from all this corruption which I believe to exist, I did not, and could not be supposed to, have any legal evidence of the fact.

I stated to them distinctly, from the very outset, that I had no evidence—no personal knowledge; and gentlemen will see that it is impossible that I should have had any, unless I made myself *particeps criminis*. I had a right to believe that the committee would not publish these statements when they were not legal evidence; and I ask gentlemen to relieve me, in their own breasts at least, of the charge of having made statements to go out before the world reflecting on individual members, or on the House, and yet refusing to substantiate my reasons for the statements. I have no corroboration of my testimony, even were I to answer this question. Every gentleman knows that the man who attempts to corrupt another, or to lead him into a path which would carry him to the point of corruption, does not do it in the presence of witnesses. It is not, therefore, in the nature of the case that I could have corroborative testimony. And I ask the members of this House as men—I ask them as gentlemen, whether, under all the circumstances, they ought to press me to a statement which it is beyond my power to corroborate, which, in the nature of things, could not be corroborated, and which could only cast suspicion on individuals without carrying conviction?

Now, again, Mr. Speaker, as to my right to make an arrangement of confidence such as I have described, and such as I deem myself bound to observe. You have not on your statute books any law forbidding that confidence—none whatever. Make such a law and I will observe it. Make such a law, and when Mr. A or Mr. B comes to me, and wishes to make a confidential communication, I will say to him, “Yes, I will receive it, subject always to the provisions of this law.”

But now in what position am I placed? Your committee have called me before them under existing laws. I have answered fairly and frankly many questions in relation to matters of fact. I have indicated to them, as I could do without violating confidence, where they could obtain facts which will satisfy this House, and satisfy the country, that I was not so very far wrong in risking my publications on moral conviction. Your committee go further. They allowed me to say to them that I had knowledge which I had a right to have under your existing laws; and having got that from me, they now come here, and upon the basis of an admission thus obtained, asked you to pass a law which shall compel me to answer that question when it shall be put to me again in the future, and which shall punish me by fine and imprisonment if I persist in my refusal to answer. They have the very basis of that question from—where? From outside rumor? No, no; but from the answer made to a question which they put to me—an answer which I gave under the laws *as they exist*. Is it right—is it constitutional, to make a law which shall entrap me in this way, and visit upon me all the effects of an *ex post facto* law? Is it right thus to deprive me by indirection of the guaranty which the Constitution gave me? If this law which they now propose to enact had existed, they would never have known from any source, in all human probability, that I was the receptacle of any such secret. There is no provision of law which could have forced me to answer the original question which is made the basis for the second. And if the law which they now propose to enact had stood on the statute book, I could have declined to answer on grounds which every court would admit.

I do not intend—I have not intended—to go into any extended argument at this time. I did not expect these proceedings to this extent. I had a right to expect a different conclusion of to-day's proceedings. If the House will hear me, I would like to state more clearly my pro-

position by a little figure. Suppose some gentleman—let it be the Speaker if you choose—had come to me, and after binding me to confidence had unfolded to me a plan for the destruction of the Treasury building. I should feel that under the seal of confidence I have no right to go and make affidavit that the Speaker has made such a proposition, or that he designs to-morrow night to destroy that building; and every gentleman would see that it would be an act of folly for me to attempt any such thing, as from his superior position he would in all probability crowd me to the wall. I could not substantiate the statement; but would I be released by that consideration from uttering those warnings which would be necessary to save the building from destruction? Certainly not. And that is exactly what I have done here. I take up the Minnesota land bill. I state certain objections to that bill, which I say make the bill itself look suspicious. I present that question—not to Congress, but to the country. I say that this bill on its face would seem to give corroboration to the rumors floating about, that corruption is used to pass such a bill. I make that question not to the House, but to the country. I simply warn the House against permitting the crime to be consummated. I ask them to look carefully into the bill, and to look carefully into all the circumstances, and see for themselves whether these suspicions have any just foundation.

I have simply done my duty in the way in which I believe I would best accomplish a good purpose, and in the way which was best calculated to preserve my own integrity and my own reputation. I stand precisely now in the position in which I should stand, if, in the illustration which I have made, I had gone and warned the Secretary of the Treasury that a plot was on foot—in my belief or in my honest conviction—to destroy the building to-morrow night, between the hours of twelve and two. And, gentlemen, I had a right, independent of this argument, to suppose that this House would not hold me bound to answer a question, the answer to which, as I have stated, would involve a violation of confidence. I might refer to a case now on the records of this House, placed there not many months back, in which a very large number of gentlemen in this House voted, directly, that the House had no right to censure a member for not violating confidence, even though they might have supposed that the failure to violate that confidence would permit an act which the House itself denounced. I have nothing more to say on that subject.

I simply wish to remind the House of what I have before stated—that I am no lawyer. I have made no preparation. The brief minutes I have with me were written down as suggestions were made here during the discussion of to-day. They were noted down as the moments flew so swiftly by, and are very incomplete. I am unable to make such an argument as ought to be made in this case, in behalf of the rights of citizens, and the rights of the press. I had no notice that it was intended to take this proceeding in the House. I had no knowledge beforehand of the fact that this committee proposed to come in here this morning and make this proposition. In the secrecy of their chamber they have fully discussed the subject. They have investigated it fully; and I am called here without notice, or opportunity for preparation, to meet the result of their mature deliberation. I submit to the House, then, that under these circumstances they ought to give me further time to be heard by myself or by counsel. However, I leave myself in the hands of the House—trusting, not to their magnanimity, but to their convictions of what is due to justice.

The SPEAKER. Have you anything further to say in answer to the interrogatories propounded by the House?

Mr. SIMONTON. Nothing further than to ask to be heard by counsel.

The SPEAKER. The order of the House is executed. The party in arrest has replied orally to the interrogatories of the House, and says that he has nothing further to say relative to the offense charged against him, except to request that he may be heard by counsel.

Mr. CLINGMAN. The prisoner, Mr. Simonton, or the person accused, is now here, and we must determine what further action we shall take in regard to him. My impression is that he should be detained in custody by the Sergeant-at-Arms until he shall answer the question propounded by the special committee.

Mr. HARRIS, of Illinois. If the gentleman will allow me, I will send to the Clerk's desk to be read a resolution which I have prepared, which I think will meet his views.

Mr. CLINGMAN. I yield, that it may be read.

The Clerk read as follows:

Whereas James W. Simonton has failed satisfactorily to answer the questions put to him by the order of the House, and has not purged himself of the contempt with which he stands charged: Therefore, be it

Resolved, That the Sergeant-at-Arms hold the said Simonton in custody, and place him in close confinement in the common jail in this city until he shall signify his willingness to answer the questions propounded to him by the committee; and for this commitment this resolution shall be sufficient warrant.

Mr. SHERMAN. I have prepared the following resolution, which I shall offer if I get an opportunity:

Resolved, That James W. Simonton is guilty of a contempt of the authority of this House, in refusing to answer pertinent questions put to him by a special committee of this House; and that he be held in custody by the Sergeant-at-Arms until he make answer to said questions, or until the further order of the House.

Mr. CLINGMAN. I am satisfied with the last proposition. The person in custody, Mr. Simonton, has given answer on several points. I think the House will see that none of them are of such a nature as ought to induce us to discharge him. In the first place, he says that it is not true, as has been alleged, that it was on his statement this investigation was gotten up; and he refers to the fact, that several members said in debate that they did not give credit to those statements, and would not have voted for the resolution on that ground. This is a question touching the moral guilt of the individual. If it be true in point of fact that he made statements, with a view to get up an investigation, or which might have led to it, whether they were credited or not, he was equally morally guilty; and as to the legal guilt, it is sufficient that he has been summoned as a witness, and refused to answer the questions propounded to him.

In the second place, he holds that the House has no authority whatever to take the present proceeding. The House has decided this morning, and it has repeatedly decided before, that it has authority to take this proceeding; and the Supreme Court of the United States, in the case referred to by the gentleman from South Carolina [Mr. Orr] the other day, decided in favor of that power on the part of the House.

Mr. HARRIS, of Illinois. Has the gentleman adopted the resolution of the gentleman from Ohio?

Mr. CLINGMAN. I have.

Mr. HARRIS, of Illinois. Then I ask the gentleman to let mine come in as an amendment, so that the House may decide between the two propositions.

Mr. CLINGMAN. Individually, I prefer the gentleman's resolution. I shall not call the previous question, so that the gentleman can offer it.

The House has adjudicated the question of its power; and I presume there is nothing in the argument of the prisoner likely to change its opinion. In the third place, he urges that what he uttered was on rumor; that he knows nothing of his own knowledge. Well, if that be true, and he so states before the committee, they will, of course, discharge him. But unfortunately for him, the report states just the reverse, that he declared before the committee that communications had been made to him by individual members, which are directly material. This is wholly inconsistent with his statement to-day.

As to the illustration of the defendant, I have only this to say. Suppose he informed the Secretary of the Treasury that there was a conspiracy to blow up the Treasury building, and further, that he knew two members of Congress who were concerned in it, could he not be compelled to give up the names of those members? He says he is not here under due process of law. According to the decision of the Supreme Court, when a witness is attached for refusing to answer, he is attached under due process of law.

I allude to these things in order that the House may see that there is nothing in the statement of the party in arrest to change our view of the question. As to his being heard by counsel, he has been heard already. He has stated nothing to change the judgment of the House, or furnished any just excuse for his conduct. It has been repeatedly decided by all the courts that communications called confidential do not protect a man from answering in a court of justice. Many members of the House are lawyers, and understand the legal questions. I hold, therefore, that there is no reason why we should take further time to hear legal arguments upon this point.

Mr. H. MARSHALL. If I understand the prisoner at the bar, he stated, in reply to the interrogatory of the Chair, that he had something to say himself, and that, if that was not sufficient, he would then want counsel. Now, would it not be premature if the House passed judgment on what he has said, when in conclusion he ask for counsel?

Mr. CLINGMAN. If, upon the question being put to him by the Speaker, he had said that he preferred to be heard by counsel, then I think he would have been entitled to be so heard, under the terms of the resolution. But he thought proper to go on and make a statement, and, by-the-by, that statement was of such a character as to show that he had no need of counsel. I hold, therefore, that the House is under no obligation whatever to extend further indulgence to him.

As the gentleman from Illinois desires the floor to offer his motion as a substitute, I yield to him.

Mr. HARRIS, of Illinois. I move to amend the resolution by substituting what has been read by the Clerk. I have but one word to say in reference to the substitute I have offered for the original resolution.

All the points upon which the prisoner at the bar has been heard have, as it were, passed from the judgment of the House. They are settled by its prior action. They are *res adjudicata*. As to the power of the House, and as to the steps which they have taken to bring the affair to this point, they are over and settled. Now, what is to follow? If the adoption of the resolution by the House is to be followed by placing the prisoner in the custody of the Sergeant-at-Arms, how is he to be treated? Has the Sergeant-at-Arms any place in which he can hold in custody the person committed to his charge? What is to be done with him? Is he to have a guard placed over him to protect him,

and is he to be fed and feasted at the expense of the House, because he has brought himself into this position, or is he to be held in the same position that others are who have brought themselves into the same line of offenses in which he stands? I am for making no distinction between him and other persons who stand in contempt of a court of law; and in such a case the order of the court would be that he should stand committed until he purge himself of contempt. There is no proper place to which he can be committed except to the common jail of the District, and there is where I think he ought to go, and there is where I propose he shall go.

Mr. BOCOCK. I desire to know of my friend from Illinois, if his proposition shall pass, what jail there is under the control of this House in which this man can be confined? Has this House the right to order the jailer of the city jail to receive this prisoner? Has this House any control over the city jail? Is there any such building under the control of this House, or any officer whom the House can command to receive this prisoner?

Mr. HARRIS, of Illinois. I will endeavor to answer the inquiry of the gentleman from Virginia. He asks whether there is any jail under the control of this House in which it can confine those who stand in contempt of its orders. If there is no jail in which this man can be confined, the Sergeant-at-Arms will report the fact to the House, and the House will then see whether it is necessary to make any further provision. If the keeper of the jail in this District shall refuse to receive this culprit under the resolution as the *mittimus* which is to commit him, then it will be time for us to take action upon that point. But if the House has a right to punish for contempt, it has the same right to use the prison to punish for this contempt, as anybody in the District has for a like purpose. These buildings have all been erected under appropriations made by Congress. They are erected by provisions of law, and the Congress of the United States, or either branch, has a right to use them for the punishment of individuals who stand in contempt of their laws or authority. When the point which the gentleman from Virginia has suggested comes up, it will be time to meet it. I think the resolution which I have proposed means something, and it will effect something; while the resolution prepared by the gentleman from Ohio [Mr. Sherman], which the gentleman from North Carolina proposes, simply provides for holding the prisoner in custody, to be boarded at a hotel at the public expense, and lionized about the District. I want to put the knife directly into the ulcer.

Mr. ORR. Will the gentleman yield me the floor to have read an amendment which I desire to offer?

Mr. HARRIS, of Illinois. I will give way to hear it read.

Mr. Orr's proposed amendment was read, as follows:

J. W. Simonton having appeared at the bar of the House according to its order, and the causes assigned for the said contempt being insufficient: Therefore

Resolved, That the said J. W. Simonton be continued in close custody by the Sergeant-at-Arms, or in his absence by Mr. William G. Flood, during the balance of this session, or until discharged by the further order of the House, to be taken when he shall have purged the contempt on which he was arrested, by testifying before the committee.

Mr. BOYCE. I desire to offer a resolution, and ask that it may be read.

The resolution was read for information, as follows:

Resolved, That it is inexpedient for this House further to concern themselves with the matter of Simonton, now before the House for an alleged contempt, and that he be discharged from the custody of the Sergeant-at-Arms, and be no longer allowed to occupy a reporter's seat on this floor.

Mr. HARRIS, of Illinois. I see, from the variety of propositions that are introduced here, what must be the result. I have no doubt the individual under arrest would desire nothing more than the passage of the resolution last read; but for myself, I desire the passage of a resolution the effect of which he will feel, and from which the public will understand that we are in earnest about it.

I call the previous question.

Mr. ORR. Will the gentleman yield the floor a moment?

Mr. HARRIS, of Illinois. I will hear the inquiry of the gentleman if he desires to make one.

Mr. ORR. I desire to say, Mr. Speaker, that if the resolution of my colleague [Mr. Boyce] should be adopted, I should feel myself constrained to ask the House to excuse me from any further service upon the select committee.

Mr. CLINGMAN. I have a right to modify my proposition, and I will accept in lieu of it the one offered by the gentleman from Illinois [Mr. Harris].

Mr. ORR. Is there, then, only one proposition pending?

The SPEAKER. Only one.

Mr. ORR. Then I hope the previous question will not be sustained.

Mr. HARRIS, of Illinois. I withdraw the call for the previous question to enable the gentleman from South Carolina to offer an amendment.

Mr. ORR. I offer the amendment in the nature of the substitute which I indicated, as follows:

J. W. Simonton having appeared at the bar of the House, according to its order, and the cause assigned for the said contempt being unsatisfactory: Therefore

Resolved, That the said J. W. Simonton be continued in close custody by the Sergeant-at-Arms, or in his absence, by Mr. William G. Flood, during the balance of this session, or until discharged by the further order of the House, to be taken when he shall have purged the contempt on which he was arrested, by testifying before the committee.

* * * * *

The said amendment was agreed to.

The question recurred on adopting the resolution as amended.

Mr. Faulkner called for the yeas and nays.

The yeas and nays were ordered.

Mr. Walbridge (at twenty-five minutes past 4 o'clock) moved that the House adjourn.

The motion was not agreed to.

The question was taken; and it was decided in the affirmative—yeas 136, nays 23. (Globe, p. 413.)

So the resolution as amended was adopted.

Mr. ORR. I rise to a privileged question. I move to reconsider the vote by which the House has adopted the resolution, and I intend to make a few remarks in reference to it. Two or three of the gentlemen who voted on this resolution indicated that nothing would grow out of it. I offered the amendment, not because I did not believe that the House had authority to keep in close confinement any person who had violated the privileges, or who was in contempt, but I offered it because I could not vote for the resolution of my friend from Illinois [Mr. Harris], inasmuch as that resolution instructed the jailer of this District to receive this party. Now, sir, we have got no authority to issue an order to the jailer at all. Suppose the jailer had refused to have received the party, there would have been no remedy. Therefore, whatever punishment this House sees fit to impose for a breach of its privileges, the executive officer for that punishment must be your own officer, so that if that officer fails to perform his duty, you will have a responsible party before

you to punish. Gentlemen say that there is a probability that—this resolution having been adopted—the party will enjoy all the ease and luxury of the city——

Mr. QUITMAN. I must call the gentleman from South Carolina to order. He is not discussing the question of reconsidering the vote.

The SPEAKER. The motion to reconsider opens the merits of the question.

Mr. ORR. Mr. Speaker, if the House had passed an order to imprison this party in the common jail, it would have been nugatory. If the jailer had refused to receive him you would have had no remedy. You must, therefore, confine the execution of the order of the House to your own officers. It is true, the resolution is not very specific. It speaks of close custody. Now, if the Sergeant-at-Arms construes the resolution to mean that the party shall not be deprived of his liberty, and shall go where he pleases, only accompanied by one of the deputies of the Sergeant-at-Arms, I suspect that that officer will find himself called on to answer why he failed to execute the order of the House. Having made this explanation, I move that the motion to reconsider be laid on the table.

UNITED STATES SENATE—COMPULSORY TESTIMONY BEFORE COMMITTEES OF CONGRESS.

* * * * *

Mr. ORR. I would inquire of the Chair what the regular order of business is?

The SPEAKER. It is the consideration of a motion to lay upon the table a motion to reconsider the vote by which the House adopted the following resolution:

J. W. Simonton having appeared at the bar of the House, according to its order, and the cause assigned for the said contempt being unsatisfactory: Therefore,

Resolved, That the said J. W. Simonton be continued in close custody by the Sergeant-at-Arms, or, in his absence, by Mr. William G. Flood, during the balance of this session, or until discharged by the further order of the House, to be taken when he shall have purged the contempt on which he was arrested, by testifying before the committee.

Mr. ORR. Then I call for the regular order of business.

The SPEAKER. The question is upon the motion to lay upon the table the motion to reconsider.

Mr. CLINGMAN. I understood that the yeas and nays were ordered upon that motion yesterday.

The SPEAKER. Not upon the motion to lay upon the table.

Mr. CLINGMAN. I hope it will be voted down, so that we may reconsider the vote.

Mr. ORR. I call for the yeas and nays on the motion to lay upon the table.

Mr. H. MARSHALL. I wish to inquire where the man is who was yesterday before the House—whether he is now in custody or not, and if so, by what authority?

The SPEAKER. That is not a question properly before the House at this time.

Mr. H. MARSHALL. I respectfully suggest to the Chair that it is properly before the House. It is a most pertinent question to know

whether the party, upon whom we are about to pass sentence, is in custody or out of custody.

The SPEAKER. The Sergeant-at-Arms informs the Chair that the person arrested and brought to the bar yesterday is in his custody.

Mr. ORR. And he can not go into his custody under the direction of the resolution until the resolution shall have been finally disposed of.

Mr. CLINGMAN. I hope the gentleman from South Carolina will withdraw the motion to lay upon the table, and let us see if we can not reconsider, and then amend the resolution, and take a test vote upon the motion to reconsider.

Mr. ORR. A motion to reconsider would be debatable.

The SPEAKER. It would be.

Mr. ORR. If there is a majority of the House who desire to reconsider, they will vote against the motion to lay upon the table.

Mr. H. MARSHALL. Before that vote is taken, I want the prisoner to be brought to the bar of the House.

The SPEAKER. The Sergeant-at-Arms informs the chair that the accused is present and in his custody. The question recurs upon the motion to lay the motion to reconsider upon the table; upon which the yeas and nays are called.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 115, nays 78. (Globe, p. 426.)

So the motion to reconsider was laid upon the table.

The question recurred upon the bill reported by the select committee more effectually to enforce the attendance of witnesses upon the summons of either House of Congress, and to compel them to give testimony.

Mr. Davis, of Maryland, was entitled to the floor.

Mr. STANTON. With the consent of the gentleman from Maryland, I desire to say that the object I had in view in making the motion to recommit the bill to the select committee has been accomplished. The bill has been printed; I have examined it, and am satisfied with it; and I therefore withdraw the motion to secommit.

Mr. GROW. I rise to a question of order. It is this: that, by the adjournment of yesterday, the bill went to the Speaker's table, for the reason that a bill of this character was not privileged as a report of the select committee. Not being a privileged question in its introduction into the House, and the House adjourning while it was under consideration, as a matter of course it went to the Speaker's table.

The SPEAKER. A motion to recommit will in ordinary cases enable the bill to be retained before the House. In this case, a motion to recommit was pending.

Mr. DAVIS, of Maryland. When the person was brought to the bar of the House yesterday, I had stated all that I desired to say in reference to the first section of the bill. Since then, the committee have carefully revised the language of the bill, and have endeavored to make it more precise. They have, therefore, varied in some respects the first section, and have appended to the second section the provision suggested by Mr. Ritchie, a member of the committee. I am now instructed to offer this as a substitute for the bill introduced yesterday.

The substitute was reported, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person summoned as a witness by the authority of either House of Congress to give testimony, or to produce papers, upon any matter before either House, or any committee of either House of Congress, who shall

willfully make default, or who appearing shall refuse to answer any question pertinent to the matter of inquiry in consideration before the House or committee by which he shall be examined, shall, in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor in any court of the United States having jurisdiction thereof, and on conviction, shall pay a fine not exceeding one thousand dollars, and not less than one hundred dollars, and suffer imprisonment in the penitentiary not less than one month nor more than twelve months.

SEC. 2. *And be it further enacted*, That no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture, for any fact or act touching which he shall be required to testify before either House of Congress, or any committee of either House, as to which he shall have testified, whether before or after the date of this act; and that no statement made or paper produced by any witness before either House of Congress, or before any committee of either House, shall be competent testimony in any criminal proceeding against such witness in any court of justice; and no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of such paper may tend to disgrace him, or otherwise render him infamous: *Provided*, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Mr. MILLSON. I greatly prefer the substitute just offered by the gentleman from Maryland to any of the propositions before the House. It relieves me of many objections which I had to the original bill, and to the amendment proposed by the gentleman from Georgia [Mr. Cobb]. But I would make a single suggestion to the gentleman. It is this: that he would strike out the word "penitentiary," and insert instead the words "common jail." [Cries of "Oh, no!"] I will give the reason for it——

The SPEAKER. The gentleman from Maryland asks leave to submit the amendment which has been reported as a substitute for the bill before the House. It can only be received by general consent.

Mr. WALBRIDGE. I object, because I am opposed to the whole principle.

Mr. MILLSON. I beg the gentleman from Maryland to hear a single word of suggestion. It is this——

Mr. COBB, of Georgia. What I have to suggest precedes any other suggestion. My object is to get this substitute before the House. I ask why it is not before the House? Is there a motion to commit pending?

The SPEAKER. A motion to commit is pending. The gentleman from Kentucky [Mr. H. Marshall] moved to commit the bill to the Committee on the Judiciary.

Mr. COBB, of Georgia. Then I appeal to the gentleman from Kentucky to withdraw his motion to commit until this amendment be offered by the gentleman from Maryland, and thereby get over the solitary objection made by the gentleman from Michigan.

Mr. H. MARSHALL. I withdraw the motion to commit.

Mr. DAVIS, of Maryland. Then I offer what has been read as a substitute for the bill.

Mr. H. MARSHALL. I now renew my motion, that the bill be referred to the Committee on the Judiciary, with instructions to report at any time.

The SPEAKER. The motion to commit must be in the usual form—a motion simply to commit to the Committee on the Judiciary.

Mr. MILLSON. This bill, as well as the original bill, proposes, very properly, to make this offense a misdemeanor. A misdemeanor is an offense simply because it is prohibited by law. It is not an offense in the nature of things. It is *malum prohibitum*, and is never punished by infamous punishment. The punishment of a misdemeanor by impris-

onment is always imprisonment in the jail. The offense of felony is always punishable by imprisonment in the penitentiary. Now, then, it is manifestly inconsistent—as I trust the gentleman will perceive—to declare the offense first to be only a misdemeanor, and then to subject the offender to the punishment applied only to felonious offenses. That is the simple suggestion which I had to make; and if the change be made in the bill, it will remove every objection which I have to the bill.

Mr. LETCHER. Will my friend from Maryland pardon me a moment? I desire to suggest the propriety of adding a third section to the bill, which will make it the duty of the Speaker of the House, or of the Clerk of the House, to report to the attorney for the District of Columbia any failure that may occur here under the law, in order that a prosecution may be instituted.

Mr. DAVIS, of Maryland. Mr. Speaker, the alterations made in the bill by the committee were confined simply to making the language more precise, in order that there might be no difficulty, if a case should arise, in knowing exactly what the courts have to pass upon. The only alteration in the first section of the bill is to substitute for the language, “if a witness shall refuse or fail to discover the facts and circumstances,” the words “shall fail to answer any question,” in order that there might never arise a question as to whether the witness had held back a part of the circumstances, and only discovered a portion, and so as to confine the judicial inquiry to the fact whether he had willfully refused to answer, leaving to him entire freedom as to the kind of answer he shall make to the question. The modification of the second section is only the addition of the proviso moved yesterday by the gentleman from Pennsylvania [Mr. Ritchie], providing that nothing in the act should exempt the party from prosecution for any perjury committed in course of such an investigation.

The first section of the bill confers no summary power on any tribunal; it increases no power now existing in any committee, and confers no power to be exercised either by the committee or the House. It makes a mere substitution of a judicial proceeding for the ordinary proceeding by attachment by a parliamentary body. It substitutes a definite punishment for an indefinite punishment. It substitutes an efficient punishment for an inefficient punishment. It substitutes the quiet formality of judicial proceeding in lieu of the irregular proceedings which occurred in this House yesterday, in attempting to exercise such jurisdiction as is necessarily incident to any parliamentary investigation. It places in the court power to punish according to the gravity of the offense, and does not make it a question of time in relation to the beginning or the end of the session, whether the party shall be confined one day, one week, ten months, or two years, without any sort of reference to the merit or demerits of the party, and depending entirely on the accidental time of the duration of the Congress at which he may be called upon to testify. I presume, therefore, that it does not inflict any burden on the citizen; that it throws guards around him; that it causes punishment to be more equitably measured out according to the gravity of the offense, and makes it more sure than any punishment that can be inflicted by this House. In addition to the great security of the rights of the citizen, it removes him from the passions and excitement of this Hall, which may affect the duration of the punishment, and makes the question a matter of calm judicial consideration and reflection, to be passed upon by a jury of his countrymen, and not in this arena, where partisans may frequently, in political questions, carry into the measure of

punishment their party hostilities. So much for the first section of the bill.

The second section is one of a different complexion, and intended to meet difficulties prevailing chiefly on this, and somewhat on the other side of the House. There are, in the ordinary administration of criminal justice, certain methods resorted to in order to acquire evidence by the executive department of the Government. When an accomplice is placed upon the witness-stand, he is there so placed continually with the declaration of the executive Government beforehand, that if he shall fully and fairly disclose all the circumstances relative to the crime, he shall not be prosecuted for any fact that he may reveal himself to have been a participator in. The first portion of the second section is intended to grant a parliamentary pardon beforehand to every witness who, on the summons of the House or a committee, shall appear before them and testify to any fact of which he may have been guilty; otherwise there is no mode by which a pardon can be granted. The committee has no power, the Executive has no power, both Houses of Congress have no power to grant a pardon beforehand. It is to remove the obstacle to the investigation of parliamentary corruption by offering in this solemn way to the party beforehand, on his being summoned in order to give testimony, a parliamentary pardon for every criminal act that he may disclose himself to have been guilty of. I presume that there can be no reasonable objection to that, since it is an ordinary method used by the executive department of the Government in ordinary prosecutions, and the administration of criminal law. It is here that there are greater inducements than anywhere else for concealment, greater incentives to fraud, and greater interests at stake. The purity, dignity, and existence of the Republic, demand that every fear should be taken away from the mind of the witness, in order that he may honestly and freely explain and disclose everything touching himself as well as any other person.

The second clause of the second section attempts to accomplish another purpose—a purpose which, in my judgment, is already accomplished by the existing parliamentary law in daily practice in the Parliament of England, but which has not hitherto been practiced upon here; and therefore, should the committee come to this House, and ask it to enforce what they regard as the existing parliamentary law, we should be instantly met by the difficulties prevailing so widely and so justly, perhaps, on the left of the House, as to whether there is any parliamentary law governing this House other than such as it has adopted, or which some act of Congress shall have laid down beforehand. The rule of parliamentary law in England is, that every witness called before a committee of either House, or before the lower House, is not exempted from answering any question, though it may tend directly to criminate him before the criminal courts of judicature in the realm, or to subject him to a civil prosecution, or render him otherwise infamous. That is the rule with reference to the ordinary judicial proceedings in England. It is the rule here with reference to judicial proceedings. It is not the rule with reference to parliamentary investigations, where other interests are at stake—where the very existence of the Republic may depend upon coercive power to compel the disclosure of every fact that may rest in the mind of any witness. Whilst the law of England will allow no man to criminate himself, and will compel no man to criminate himself, as a consequence, when it removes a party from under the ordinary protection of the law, it provides that no fact to which he shall testify shall be given in evidence in any

judicial proceedings for the purpose of convicting him of any offense.

Mr. QUITMAN. I would ask the gentleman whether the fifth amendment to the Constitution of the United States is not in opposition to the views he advances? That amendment declares, though it says nothing of his criminating himself, that no man "shall be compelled in any criminal case to be witness against himself." The inquiry I wish to make is, whether if compelled to answer an inquiry which would throw infamy upon him, he would not be called upon to bear witness against himself?

Mr. DAVIS, of Maryland. I will answer the gentleman from Mississippi when I reach the proper point of my argument.

I have now explained, I trust intelligibly, the views that the committee had in bringing these sections before the House. On the one hand, the parliamentary law takes the party from under the protection of ordinary law, and compels him to disclose every fact whether it do or do not tend to show that he has been guilty of a crime; and on the other hand, it disables every party, and every instrument of evidence, from going into the Court of King's Bench, and there testifying to a fact which the party may have himself confessed before a committee, or a House of Parliament. In that way it accomplishes the exact purpose of the ordinary administration of justice—throws a legal protection around a party against a legal prosecution, who, for great national and public purposes, is compelled to make a disclosure; and having done that, it places at the control of the sovereign power of Parliament, every fact that exists in the bosom of every man bound by his high duty to contribute everything in his knowledge to the protection and purity of the public; it compels him by high coercive power to disclose fairly and freely everything touching his own honor, his own dignity—yea, his own life, under ordinary proceedings of law. And upon this point, I beg leave to read from a very good summary of parliamentary law, what is said upon that subject, that the House may not take it upon my simple statement. I read from Cushing's Law, who cites precedents from the Journals of Parliament and Hansard's Debates:

It has already been seen that a witness before either House of Parliament can not excuse himself from answering any question that may be put to him (with a single exception presently to be noticed), on the ground that the answer would subject him to an action; or expose him to a criminal proceeding; or be the means of divulging the secrets of his client communicated to him in professional confidence; or be in breach of a judicial oath, as a grand juror; or of a voluntary oath, as a freemason, or the like; some of which would be sufficient grounds of excuse in a court of justice. This difference between proceedings in Parliament and in the ordinary courts has been established upon grounds of public policy, and is considered to be fundamentally essential to the efficiency of a parliamentary inquiry. But while the law of Parliament thus demands the disclosure of the evidence, it recognizes to the fullest extent the principle upon which the witness is excused from making such disclosure in the ordinary courts of justice, and protects him against the consequences which might otherwise result from his testimony; the rule of Parliament being that no evidence given in either House can be used against the witness in any other place, without the permission of the House, which is never granted, provided the witness testifies truly.

In the House of Lords, although the same power clearly exists to compel the answer of a witness to criminate himself, and although the rule above mentioned is recognized, namely, that evidence taken at the bar can not be used against a witness, yet, as such evidence may lead to the discovery of other evidence sufficient to convict them, the protection afforded by the rule alluded to does not seem to be regarded as adequate; and it has accordingly been the practice for many years, when the evidence of such witnesses is about to be taken, to pass an act (which is of course agreed to by the Commons) to indemnify them in the fullest manner against the consequences of their evidence.

And the rule of the House of Commons is:

“The parliamentary law on this subject is declared and embodied in the following resolutions of the House of Commons of May 26, 1818, namely: First, ‘that all witnesses examined before this House, or any committee thereof, are entitled to the protection of this House, in respect of anything that may be said by them in their evidence;’ and second, ‘that no clerk or officer of this House, or shorthand writer employed to take minutes of evidence before this House, or any committee thereof, do not give evidence elsewhere, in respect of any proceeding or examination had at the bar, or before any committee of this House, without the special leave of the House.’”

Therefore, it will be seen that we only desire to reenact the common law of the Parliament of England, which now, in my judgment, is the common law of this House, on which I should be willing to vote. But I do not care to risk—the committee do not care to risk—this great investigation upon any diversity of legal opinion on the part of gentlemen of this House, and therefore they have come frankly before the House, and ask that, by a statute of law of the Union, every difficulty shall be removed, and every witness shall be compelled to answer—that judicial proceedings shall coerce the truth. And, on the one hand, that the witness shall be free from all difficulty by reason of his subjecting himself to a criminal prosecution; and, on the other hand, that he shall not have the cover of saying that he can not answer questions for fear he may criminate himself.

Sir, this investigation can lead to no result if witnesses are allowed to come before the committee and say that they have had arrangements with members of Congress, but they can not reveal them without, on the one hand, violating an illegal confidence, and on the other hand, subject themselves to punishment under the law of 1853.

If, therefore, the House is earnestly and honestly desirous that this investigation shall go to the bottom, and that the committee shall be enabled to do as they desire to do, either to disprove infamous slanders cast upon the House, or to prove their truth and fix them upon the guilty parties, we now call upon the House to show their earnestness by removing the difficulties that stand at the threshold of the investigation and arrest the possibility of any progress.

Now, as to the difficulty presented by the gentleman from Mississippi [Mr. Quitman], we are dealing with constitutional law, with municipal and criminal law, and the language of the Constitution is to be interpreted according to the common law signification of the language used. The language there used is that no party in any criminal proceeding shall be compelled to give evidence against himself. It is plain, therefore, that that clause only applies to a case of a party indicted for crime—himself a defendant on the record, the party prosecuted—and in that proceeding he shall not be called upon or coerced to give testimony in that prosecution which shall lead to a judgment against him. And that, sir, I undertake to say, has been the uniform and universal interpretation of that language of the Constitution; and the portion of the law which we are now dealing with is not a constitutional immunity conferred on any citizen. It is merely a rule of law adopted by the courts for the protection of the party, which rule of law is only a portion of the common law of England copied into our statutes, or enforced by custom, subject at any moment to be modified by the courts according to their opinion, and by the statute law according to the opinion of the legislative body. It has no relation to any constitutional provision relieving the party from coercive testimony against himself in judicial proceedings.

Still further. Having met the difficulties on these legal grounds, I

say further, that it has no relation to a proceeding of this kind at all, because if the rule of the law, which protects a witness from giving evidence, which in another criminal proceeding might be used as evidence against himself, had any relation to that clause of the Constitution, then this enactment is for the precise purpose of relieving the party from legal prosecution. The very purpose of the enactment is to grant him a pardon beforehand; to protect him against all judicial proceedings; to repeal, as far as his case is concerned, every criminal enactment under which he might have been previously held guilty; and, on the other hand, it disables every instrument of evidence from carrying into a court of justice the facts which he may here have exposed; so that, although the Constitution should be construed to apply to a rule of testimony existing under the common law, this is in entire conformity to the Constitution even so construed, by relieving the party from all legal proceedings by which he could be convicted. He is, therefore, neither constrained here to give evidence against himself in a judicial proceeding in which he is defendant, nor to give evidence which may be used in any judicial proceeding which may hereafter be instituted. It is relieving him from prosecution, compelling him to testify, repealing the criminal law so far as he is concerned, and giving the investigations of this House free course. I think, sir, we are free from constitutional objections. Why, sir, it is the law of England—a law binding on each House of Parliament, binding them as the Constitution binds us—that no defendant there in a criminal proceeding shall be compelled to criminate himself. And yet there it is the ordinary law of Parliament that the party shall be compelled to testify. The two rules stand in entire conformity. They look to different purposes. They look to different forums, to different subjects of legal procedure. They stand together, the one with the other; and the great constitutional principle is untouched by a law which compels the party to tell the facts, although they may show that he has been infamous, although they may show that he has been guilty of crime; but at the same time it repeals the criminal law, and disables those facts which the party has disclosed from being given in evidence against him which would tend to criminate him.

Now, that is the whole provision of the law proposed by the committee. They have considered it with all the deliberateness they could employ; and they regard it as coming directly within the purpose for which they have been appointed. It is their remedy, proposed for the great evil of parliamentary corruption. Exposure is the remedy; punishment is the remedy; and exposure and punishment are impossible, so long as the men who hang around the lobbies of this House shall one day tender the bribe and the next day say they can not criminate themselves. I call, therefore, on the House, by their sense of consistency, by the good faith and honesty with which they have opened this investigation, unless there be some grave reason why this protection should not be given to this body, that they now pass this law. Modify it, amend it; but give us a law which will accomplish this purpose, and let us lay before the House the facts which do exist.

Mr. WASHBURN, of Maine. I understand that the motion before the House is to refer this bill to the Committee on the Judiciary; and, sir, if that committee can have authority to report back at an early day, so as to secure speedy action upon the bill, I hope that motion will prevail. I had an impression this morning when I came here that I should vote for this bill as it was rather than that it should fail; but I must say that on examining it I have some misgivings in reference to some of

its provisions, and I hope that it will be committed to the Committee on the Judiciary, that they may examine it carefully, modify it and amend it if necessary, and make it what it should be in order to accomplish the objects of the bill, which I take to be to secure the purity of this House without violating the rights of the citizen. I want that committee to examine and inquire, in the first place, whether jurisdiction over the offense to be declared is given with sufficient clearness and precision to any judicial tribunal? Statutes of this kind are construed strictly, and it may admit of question whether the bill, as it now stands, would not wholly fail to accomplish its purpose. The bill provides that a party offending may be indicted as for a misdemeanor before any court having jurisdiction thereof. Is this equivalent to saying that the offense is a misdemeanor, cognizable by any court having power to try misdemeanors?

I agree with the special committee that it is important that some bill of this kind—an effective and stringent bill, too—should be passed. The character of the House demands it; and I believe that great good will be accomplished if there shall be power given to committees to make their investigations full and thorough, and which will enable it to elicit all the facts in the case.

But, Mr. Speaker, I do not desire that any bill shall be passed—I do not intend to vote for any bill—which shall be inconsistent with the constitutional rights of the American citizen. And I wish the Committee on the Judiciary to inquire whether this bill would be inconsistent with and in derogation of the fourth article of the amendments, which provides that the right of the people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures, shall not be violated. I would have the Committee on the Judiciary inquire whether, under the summons of a committee, or the warrant of the Speaker, you may not cause to be done, should this bill become a law, what the constitution prohibits? whether, in fact, a more effective seizure of papers could be had in any way than under the form of this bill, by which parties may be compelled to produce and exhibit all their private papers under penalty of a year's imprisonment? And, sir, if you may impose this punishment, you may a greater, and make the imprisonment for ten years or for life.

Mr. STEPHENS. Read the latter part of the fourth clause.

Mr. WASHBURN, of Maine (reading):

And no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Unreasonable searches and seizures are not to be made, nor are any to be made without warrant upon probable cause, supported by oath or affirmation. Are you not by this bill dispensing with the conditions and requirements of the constitution, and endeavoring to obtain the possession of private papers without warrant issued upon probable cause, and supported by oath or affirmation?

The second section of the bill declares that no person summoned as a witness shall be excused from answering a question for the reason that his answer would criminate himself; and provides that he shall be exempt from punishment for any offense which he may testify that he has committed, and that on trial for such offense in any court in the country such evidence shall not be used against him.

Now, suppose that before a committee of this House it shall be disclosed by a witness that he has committed forgery in the State of New York, and that he is indicted in one of the courts of that State for

such offense, I ask whether Congress can prevent his admissions here from being given in evidence there? Has Congress the power over States and State courts which such legislation would imply? Has it power to determine what shall or shall not be crimes in the jurisdictions of the several States, or what shall or shall not be received as evidence in their courts in the trial of crimes against their own local laws, and committed within their jurisdictions?

Mr. DAVIS, of Maryland. I ask the gentleman from Maine to allow me to interrupt him for a moment, to say that, on consultation, the committee instruct me to say that they are willing, with the consent of the House, to substitute "common jail" for "penitentiary" in the bill, and to adopt as an additional section the amendment suggested by the gentleman from Virginia [Mr. Letcher], that the Speaker of the House and President of the Senate shall certify to the court any failure of a witness to testify.

The section was read by the Clerk, as follows:

SEC. 3. *And be it further enacted*, That when a witness shall fail to testify as provided in the previous sections of this bill, and the facts shall be reported to the House, it shall be the duty of the Speaker of this House, or the President of the Senate, to certify the fact, under the seal of the House or Senate, to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

Mr. WASHBURN, of Maine. Although Congress should enact that no declaration a witness shall make before a committee of this House shall be used in any court of law in any State of the Union, would such a provision be binding upon the State courts, or can Congress override or abolish their local laws and rules of evidence?

I have not risen to detain the House for any length of time. I am anxious that a bill shall be passed, and passed immediately, for the purpose of forcing witnesses to answer. I know that such a law is necessary. But I want to pass a just bill—just to the House, to the States, and to the citizen. I hope the pending bill will be referred to the Committee on the Judiciary, with the right on their part to report at any time.

Mr. TAYLOR. The gentleman from Maine, as one of his objections to this bill, states that if it be passed, any person making declarations before this House, or any of its committees, will, in case of a criminal prosecution against him, be liable under State law, if those declarations can be proved, to conviction. Let me ask that member whether it is not law in every State of this Union that no compulsory confession of a witness can be produced in evidence against him? Would not, under the law of the land, such declarations everywhere be excluded?

Mr. WASHBURN, of Maine. The bill implies the reverse; but, as I have stated, I do not wish to occupy the time of the House. I desire that the bill may be acted on speedily, and such a law made as will accomplish the objects which I presume the special committee have in view.

Mr. GROW. I do not rise to prolong this discussion. It seems to me to be premature. After a few preliminary remarks, I propose to call for the previous question, unless I understand that other days are to be set apart for territorial business, in lieu of the two that have been consumed by the pending question of privilege.

It seems to me that we are discussing a question which should go properly before the Committee on the Judiciary for its action. The best evidence of this is the fact that, on yesterday, the special committee reported a bill which they, in their virtuous indignation, wished

to pass immediately, no matter what personal rights were trampled on, no matter whose liberty was invaded, regardless of all the safeguards thrown around our legislation—to pass in five minutes, without examination, though the gentleman from Kentucky [Mr. H. Marshall] moved its reference to the Committee on the Judiciary, that the House might know what it was acting on, and that to-day, after a night's reflection, they bring another bill here, modifying that already pending. This is the best evidence why this subject should be sent for investigation to the Committee on the Judiciary.

Mr. ORR. And thus defeat the investigation.

Mr. GROW. Let that committee have the right to report at any time. We shall know then what we are acting on. The right of an individual citizen is of as much importance as anything else. And when the committee reports a bill to overturn the law of evidence and the common law doctrine of personal liberty, I do not think it should be passed in the hurly-burly of a five minutes' debate. Let it go to the appropriate committee first for investigation. Shall a citizen be compelled to stand before the public, and blast his own reputation, and the common law be violated—that law we have been taught to regard from our cradles as the great bulwark of the citizen against the encroachments of the Government?

Mr. DAVIS, of Maryland. The purpose of the committee is not to repeal, but to reenact or set forth the existing provisions of common law.

Mr. GROW. I do not rise to discuss the merits of the bill. I give my reasons why this bill should be referred to the appropriate committee. I take it that neither the virtue of this House nor the virtue of the country will suffer by a few days' delay. Why hasten through this legislation, which may affect unjustly the personal rights of American citizens? Why not let it take the usual course? Because members of Congress are charged with corruption, why hurry the legislation now proposed by the special committee? Are not the rights of individual citizens of as much consequence, and as much entitled to our protection, as our own reputations? If new laws of evidence for the courts of the United States were proposed, no member would agree to their passage without examination.

Now, I make the appeal which I made yesterday to the House—for I am not disposed to prolong this discussion, and to consume the time which has been set apart by the order of the House for other purposes. I ask the House to set apart two days, in order to carry out in good faith the order of the House in reference to territorial business. The House set apart three days for the consideration of that business. Yesterday was consumed by this privileged matter, and to-day will be consumed upon it; and unless two other days shall be set apart, I shall be compelled to call the previous question. If that time can be set apart, I have no disposition to do so.

* * * * *

Mr. H. MARSHALL. My motion to refer this bill to the Committee on the Judiciary was induced not merely by the fact that such is the ordinary course of legislation and that this bill proposes a general law, but was especially the result of my own examination of the particular provisions of this bill. It may be that the enlightened select committee, whose measure it is, have paid especial attention to the subject so far as they had time and opportunity; but it must be apparent to the House, from their own proposals to amend it this morning, that they

could scarcely have deliberated maturely upon its structure, when they presented it yesterday in another form. It may be true, indeed I think probably it is true, that some general law of this description is called for; but when such a law is passed by Congress its provisions should be specially guarded, and the exact range of its operation, as well as its harmony with existing laws, should have been matured by the legislator. I do not like this bill, because in the first section you propose that if "*any* person shall refuse to testify upon *any* matter, or upon any subject, before a Congressional committee, such person shall be subject to indictment and sentence of fine and imprisonment, at the discretion of a jury, within specified limits—the fine from \$100 to \$1,000; the imprisonment from one month to twelve months. Such generality confounds all the guilty, by failing to discriminate as to the reasons existing for the refusal, or as to the circumstances under which it occurs. The bill proposes to punish equally the cabinet officer and the culprit who may have insulted the dignity of this House by an attempt to corrupt a Representative of the people. It confounds the witness who may refuse to disclose a political combination made for party purposes, and which Congress might choose to investigate, equally with the man who infests the Capitol to drive his selfish schemes by efforts to degrade public officers through appeals to their venality. I submit to the House whether, when a general law is framed, distinctions should not be wisely drawn between the occasions upon which a witness stands recusant, as well as upon the subjects on which such recusancy may occur. As an example of the amendments which would improve the bill, the following is *one* I have drawn, and which I would propose, at a proper time, in the first section, to-wit: after the words requiring the witness to testify in any manner, insert the following:

Touching the official conduct of any member of the Senate or House of Representatives of the Congress of the United States, or of any officer of the Government of the United States, or touching any proposition to offer inducements, by promise of reward or other compensation, to secure the adoption or rejection of any measure pending or to be brought before Congress, or any committee of either House thereof, or before any department or Bureau in the Government of the United States.

If it is the purpose of the bill to afford to Congress protection against the corruption of members of the body, or against the slanders and libels of bad men, who promulge foul and unfounded suspicions against their official integrity, let the bill be so framed as only to embrace cases in which officers of Government are involved, or in which the testimony, if produced, would affect them. The bill proposes to call the judicial arm to the aid of Congress in vindicating its integrity, by requiring the court to punish the witness for contempt of Congressional authority who refuses to testify before our committees. Now, sir, let the bill be confined to those cases in which the integrity of members of Congress or of departmental or bureau officers is the matter to be investigated, and, if it is the sense of the House that sufficient authority for the purpose does not now reside in the Houses of Congress, then let the bill invoke the aid of the judiciary in such cases, but in those cases only. Let not a general law of this description pass here without reflection and examination. It takes within its scope every man, woman, and child in the Republic, and makes the occasions for the exercise of the power it confers as various as the subjects upon which Congress may, in its fancy, institute examinations. You have a tariff bill pending, and Congress institutes an examination. A manufacturer is called before your committee, and it is proposed he shall testify as to the man-

ner in which certain colors are produced. He refuses; and by this law you put him in the penitentiary. I might give numberless instances to condemn the scope of the bill in its first section as utterly indefensible. It has, no doubt, a good aim on the part of the select committee, but its range is entirely too great for the objects only it should propose to attain.

I must confess I have not much relish for the idea of a bill of pains and penalties to be administered by the judicial branch, if the intent is only to afford a summary and effective mode to Congress to protect itself. Mr. Speaker, this House can protect itself. It has authority for that purpose. It can punish for a contempt of its authority by fine and imprisonment; and while the fine is not limited, unless by that term of the Constitution which prohibits *excessive* penalties, the imprisonment may be extended to the very end of the constitutional existence of the House. These points are fully decided in the case of *Anderson vs. Dunn*, reported in 6 Wheaton. The power rests on the necessity of the case, and bribery, corruption, etc., are the very examples selected by the Supreme Court of the United States to illustrate the necessity for the power to reside in the House respectively. Still, sir, if it is the desire of this House that cumulative penalties, to be administered by the judiciary after our existence as a Congress shall have terminated, shall be provided against recusant witnesses who have been called before Congressional committees, as the law is to be a general one, let it be considered by a standing committee, and take the usual direction of legislation. If it be the wish of the House to act upon the bill with expedition, the Judiciary Committee could be directed to consider this bill immediately, and to report upon its provisions. That committee would undoubtedly esteem it their duty to follow the sense of the House as to the order of business, and would return a bill at the earliest moment practicable. Nothing has transpired that I know of to require this hot haste to pass this bill, without even having it printed, and without an hour for an examination of its contents.

I suppose it would not be contended that the necessity for this law appears from the case which has just been concluded by the commitment of a witness for contempt. Is not that witness punished? Will he not continue to be in custody of the Sergeant until he yields to the authority of the House, or until the House itself dissolves? What facility will the law afford to compel *him* to testify, if he persists in refusing? Ah! but gentlemen say he will be indicted after the House adjourns, and will be fined and imprisoned under this law. That may or may not be. Possibly a question may arise, so far as he is concerned, whether Congress can call a witness to testify, and finding him recusant, from whatever reason, can pass a law within twenty-four hours thereafter, then repeat the experiment with him in the pending investigation, and should he still refuse, punish him under the new law so provided. Possibly, Mr. Speaker, the court whose aid Congress intends to invoke, may take a different view of your power in this regard from which seems to prevail here.

Mr. CLINGMAN. Suppose this law is passed to-day, and that to-morrow or next week this same man is brought before the committee and declines to answer, does he not come under the law?

Mr. H. MARSHALL. I think he would not, in all probability.

Mr. CLINGMAN. Not for his refusal hereafter?

Mr. H. MARSHALL. I was saying that the court might take a view of the case differently from that which prevails here. No *ex post facto* law shall be passed, says the Constitution. Now, you bring forward a

witness and demand that he shall testify to a point propounded to him by your committee; for reasons satisfactory to himself, or from sheer defiance of your authority, he declines. You at once legislate to meet his case, and you make a law to impose such a penalty upon the commission of the act of which he has been guilty as will force him to answer. You recall him before the same committee, in the same proceeding, and put to him the same question. He still declines to answer. You propose to punish him, now, after the fact, under a law you made for his case, and to compel him to testify. The provision in regard to *ex post facto* laws might have application to such a case, and I think it would have under a variety of views. As an example, suppose I receive a confidential communication to-day, of such a nature that I am not bound *legally* to disclose it as testimony before a court; this evening I am called before a congressional Committee and requested to tell it; I refuse; to-morrow you pass the law to punish me if I do not tell in a case exactly covering such a communication as that I received, and you again call upon me to disclose; I still refuse: would your penalties apply to my case? Surely not; because I received the communication legally under confidence, which legally I could retain. Your law altering my duty as to the disclosure would be *ex post facto*, though I might not be called a second time until after it was passed. *That is my opinion.*

Mr. CLINGMAN. I am supposing a case to occur after this becomes a law, and then a party is brought before the committee, and refuses to answer. Suppose I commit an assault and battery, and there is no law to punish me; then a law is passed punishing like offenses, and the next day I commit another assault and battery; can not I be indicted under that law?

Mr. H. MARSHALL. It is well worthy of consideration whether it is proper, upon the part of this House, to legislate for an extreme case, or to make a general law to affect a man whom they desire to reach. If there were any argument which would induce me to halt upon my steps, *to consider what I am about*, it would be that this seems to be a call for rapid and unusual legislation, in order *to embrace the case of an individual*.

Mr. TAYLOR. I wish to ask the gentleman from Kentucky where he finds the authority in reference to the *ex post facto* law?

Mr. H. MARSHALL. I merely rose for the purpose of indicating to the House the general views which induce me to desire that this proposed law shall be referred to a proper standing committee of the House. I am perfectly willing that that committee shall have instructions to sit during the sessions of the House, to consider the law at once, and to report as soon as possible.

Mr. WALKER. I should like to ask the gentleman from Kentucky this question: If I understand the gentleman's argument, it indicates a *settled opposition* on his part against this bill; and, if so, it seems to me that the House ought to act on the old maxim, "Never commit a child to an unfriendly guardian." I ask the gentleman whether he is not opposed to the bill in every form and shape?

Mr. H. MARSHALL. I will state to the gentleman very distinctly that I am not opposed to the bill in every form and shape; on the contrary, if the bill can be framed so as to meet the exigencies of the public service, and to harmonize with our system of laws, it shall have from me *every assistance that friendly intelligence can render to it*.

Mr. TAYLOR. I understood the gentleman from Kentucky to say that there was no power to pass such a law. He argued that it was an *ex*

post facto law; asserted that there was no power in Congress to pass a law which would have a retrospective effect; and stated that any such law would be null. I do not agree with the gentleman that this is an *ex post facto* law. This act will apply only to future refusals to testify. It is not then retrospective. But I wish to ask the gentleman on what grounds he makes such an assertion? In the Constitution of the United States there is a provision in relation to prohibiting *ex post facto* laws, so far as they relate to States. It is a prohibition imposed upon States. No such prohibition is imposed or rests on Congress; and the Supreme Court of the United States has again and again decided that it is competent to pass laws which are retrospective in their operation. I could refer the gentleman to multitudes of cases, coming up from the States in which State laws had been passed, which were retrospective in relation to vested rights. I want to know where he gets his authority for the assertion that Congress has no authority even to pass a law which shall be retrospective?

Mr. H. MARSHALL. I might be very well content to leave the question of the gentleman from Louisiana to its own commentary. I am sure that I can not answer the question "yes, or no," and I presume nobody would therefore take it for a *leading question*. He may either take the answer as yes, or no. I said nothing here about Congress not having power to pass laws *retrospective* in their character. The gentleman very well knows that there is a wide distinction drawn between an *ex post facto* law, and a law merely retrospective in its operation.

Mr. TAYLOR. I ask where the prohibition is, in reference to *ex post facto* laws?

Mr. H. MARSHALL. I am disinclined to be put through all the learning which I may have—it is very little—on constitutional points, and I may not be able now to refer to anything in the Constitution of the United States in reference to an *ex post facto* law, which would satisfy the gentleman from Louisiana. But (opening the Constitution and reading therefrom) the Constitution of the United States says that no writ of attainder or *ex post facto* law shall be passed; that the provision of *habeas corpus* shall not be suspended unless in case of rebellion. Now, my friend from Louisiana seems to understand by that, that Congress can pass a bill of attainder, but that the States can not. That is not my reading of the instrument; it is not the manner in which I learned it. His idea is (I suppose from his argument) that Congress has the right to suspend the *habeas corpus*, but that the States can not.

Mr. TAYLOR. I see I was mistaken. I was reading section ten, of article one, and had overlooked the paragraph in section nine. It was the prohibition in section ten of the first article of the Constitution upon the States, as to the passing of laws impairing the obligation of contracts, which was in my mind. That is the restriction which is imposed on the legislatures of the States, and not upon Congress, which I had confounded with the other as to *ex post facto* laws, which is imposed equally upon both.

Mr. H. MARSHALL. Now, sir, without indicating, on my part, any hostility to a bill of this nature—although this seems to be intended to affect an individual case—and while I am prepared, on the contrary, to say that I am desirous that a bill should pass which would contribute to the honor and dignity of this House, I still do not wish to pass a law which is to operate everywhere, unless that law shall have been properly and maturely considered. If the House will resolve itself into Committee of the Whole on the bill, or if the House will *now* proceed to consider it clause by clause, without the aid of an investigation by

a committee, I will withdraw my motion to refer, and go into its consideration, clause by clause, perfect it, and pass it. I intimated to the House at the commencement of my remarks that the first section of the bill would put a man into jail for twelve months for refusing to answer the questions put to him by a Congressional committee on one subject as well as another, no matter whether it relates to the purity of the House, or to some contract, political agitation, public printing, or something else.

Let us look a moment at the *second* section of the bill. The statute-book of 1854 contains a law (see Statutes at Large, Vol. 10, p. 171, sec. 6) providing that a member of Congress of either House, or any member of this Government in any of its departments, who shall be bribed, or who shall receive compensation or reward, or promise thereof, for his vote in any matter pending before Congress, shall suffer confinement in the penitentiary for three years, and shall pay a fine fourfold of what he received. You have in that same law a clause that any man who shall offer compensation, bribe, or reward, in order to influence a vote in this House on any matter, shall, in like manner, suffer fine and imprisonment in the penitentiary. Then, so far as the actors in this corruption are concerned, there would seem to be complete jurisdiction transferred to a court of justice, and adequate penalties provided. Now, then, your witness is called upon to testify. Why do you not impose the penalty on that witness, if he refuses to testify *before the court of justice* that you impose upon him if he refuses to testify *before a Congressional committee*? If your object is to detect and punish corruption and crime by the sanctions of a general law, why shall not that law compel the witness to testify before the court where the indictment shall be pending, as well as before a Congressional committee where no penalty beyond the expulsion of the member can be inflicted?

Well, again, your Congressional committee examines a witness under your law. He testifies, and you expel the member; a grand jury indicts the member of Congress for receiving a bribe. The man who offers the bribe goes before the court of justice, and there he refuses to testify, and says: "I will not testify because it will criminate myself." Your law does not coerce him——

Mr. ORR. We do not want to coerce him.

Mr. H. MARSHALL. Your law is one, then, to expedite examinations before Congress and to enlarge its powers, and not to promote the administration of justice?

Mr. ORR. This is to enable Congress to purge itself. It is not to go to the courts and change the laws governing them.

Mr. H. MARSHALL. Congress asserted yesterday the power to purge itself. The Supreme Court of the United States has asserted the power of Congress to purge itself. The case of *Anderson v. Dunn* I have already cited as full on this point. The House may expel a member. It may imprison and fine for contempt; and an offer to bribe one of its members is stated by the court to be one of the very cases in which the House can fine and imprison a party in contempt. And the Supreme Court says, moreover, that your Speaker's writ will bring the guilty party here to your bar from the Rio Grande or the banks of the Aroostook.

Now, what more power do you want in order to *purge the House* of corrupt members if there are such here? You want, sir, to commit the power to the court to fine and imprison a recusant witness after you have lost your power and have returned to your home! When all the actors have departed and the game has flown, set your grand jury, like

the faithful dog, to point at the place it occupied! Trust to the indictment of a refusing witness!

But, Mr. Speaker, look at the matter in still another light. This bill proposes to compel a witness to speak to a matter which will render him infamous in the estimation of the community; and your relief to him is that he shall not be prosecuted for the offense as to which he testifies. You hold out to him pardon for a crime already committed in one hand, and in the other you thunder against him the penalties of this bill if he does not testify. Suppose, sir, you get his testimony: would you accept such testimony, so procured, and hang a dog upon it? Would testimony so procured be accepted by any jury in America to operate the conviction of the meanest culprit? Then, when you have it, what is it worth? Who will take it unassisted and alone?

But, again: You compel the witness to testify before the Congressional committee, you expel the member of your House, the case goes before the court, and there your witness refuses to testify lest what he says *there* (not here) shall criminate *him*. Your court will say he is justified in refusing, and that it is *his constitutional right* to refuse to criminate himself; and that your law, extending a pardon in advance, he need not accept if he does not choose to do so, for notwithstanding your law his testimony must render him infamous.

Again: I have no idea of compelling a man by law to testify before Congress to a point on which he can step to the court-houses all over the land and be justified by the judges in a refusal to yield his testimony. Let us at least make the body of our laws harmonious and consistent, if they are not the wisest that could be framed. If we can not do better than to make that criminal which our judges will justify under their practice the next minute, we had better let the matter go entirely. Suppose my countryman from Kentucky should come here, and he shall be summoned before a Congressional committee, and he should decline obedience; under your proposed law he is arrested and brought here when Congress *is not in session*; he is indicted before the district court of the District of Columbia; and while he is awaiting sentence for refusing to testify, he sees the judge before whom he was convicted justify a witness in his court for refusing to testify in another case: what, think you, would be his opinion of the lawmakers of his country?

Again: By the second section of this bill, you say to a man that if he testifies he shall not be indicted or punished by a court of justice for the act to which he testifies. That is a dangerous section—a very dangerous provision. Suppose a fellow offers a bribe to a member of Congress to affect his vote. The law says that man can be indicted, and if convicted he shall be confined to the penitentiary three years, etc. Suppose he finds that his conduct may be exposed to publicity. He invokes a friendly hand, gets an article published in a newspaper; Congressional integrity is alarmed; the honor of the House feels itself sullied; a committee is appointed; this fellow is summoned as a witness; and by the second section of this bill, having testified to the fact, he slips all responsibility under your general law, and commutes his punishment for your pardon. He is told, “You are not to be punished for the acts *to which you have testified* and for which you might be punished under the existing laws. You are relieved from the tender mercies of a jury. We repeal the statute law of the United States for your benefit and remit in your behalf the penalty now inflicted by law upon criminals of your class and degree.”

I have considered cursorily the provisions of this bill in order to show that it demands at our hands investigation. I have no personal feeling

about the matter, and no interest beyond a desire to see this House sustain itself in its deliberations with due dignity, and proceed to the determination of the laws it means to enact, after fitting deliberation upon their probable operation.

Popular clamor has no effect upon me in my place here. I can not vote for this bill in its present shape, but I will assist to pass a proper bill, effective, taking in its scope all that should be enacted on the subject, and harmonious, or at least not inconsistent with laws which are left on the statute book. But, sir, I have detained you already longer than I had intended, and I will now conclude by asking the previous question, in compliance with my pledge to the chairman of the Committee on Territories [Mr. Grow], though personally I have no indisposition to see it voted down. I move the previous question.

Mr. ORR. Has the gentleman from Kentucky submitted his amendment?

The SPEAKER. It is not in order to move to amend, pending the motion to commit.

The previous question was seconded and the main question ordered to be put.

The Speaker stated that the gentleman from South Carolina (Mr. Orr) was, under the rule, having reported the bill, entitled to an hour to close the debate.

Mr. GREENWOOD. Has the amendment from the gentleman from Virginia [Mr. Letcher] been accepted by the gentleman from Maryland [Mr. Davis]?

The SPEAKER. It has, and is part of the pending proposition.

Mr. ORR. I do not propose to detain the House anything like the hour to which I am entitled under the rules.

Mr. DUNN. Will my friend from South Carolina indulge me for a moment, as I desire to make an inquiry or two, which I wish him to answer in his remarks?

Mr. ORR. Certainly.

Mr. DUNN. I have tried as far as possible to catch the provisions of the bill, as well as of the amendment, and I discover that the terms of each are general as to the persons required to testify, and the occasions upon which they are required to testify. For instance, the bill speaks of *any* persons called upon to testify, and speaks of *any* matters about which they are called upon to testify. I ask the gentleman from South Carolina if the committee considered, and, if they did so consider, what is their judgment in reference to the effect of this bill upon communications, by the universal law regarded as privileged, to attorneys and counselors at law? Are they required to divulge things communicated to them in confidence, and for wise and high purposes of public justice, by their clients? If that be so it would require a terrible necessity to induce me to give my sanction to it. That is one point.

This is another: The necessities of the Government, as shown by long experience, have suggested the propriety of a secret-service fund to be used upon the discretion of the Executive Department. The occasion of its use, the time for its employment, and the amount to be employed and used, is not subject to subsequent exposure and explanation before any tribunal, or to any authority whatever. Was it contemplated by this committee, should we have at any future time, in one or the other branch of Congress, a factious majority, what might be the effect of this bill upon the character of persons, and upon the public interest generally, of an inquiry and exposure upon a subject of that sort?

But there is another and, so far as the public interest is concerned, a more overruling question. We have, it is true, in this country a great many persons who talk about the importance and policy of having all our diplomatic matters published. But, sir, the world does not diplommatize thus; and we are compelled to conform to the usage and practice of nations upon such subjects, and I invite the attention of the gentleman to what might probably be the operation of this bill. Even in times of peace, should a spirit of faction arise in either branch of Congress, particularly in the lower branch, in reference to pending negotiations of the most delicate and important character, should there be a determined and settled purpose to develop and publish, through the agency of a committee of this House, what was transpiring in the Executive Department of the Government upon the subject, such a disclosure might be productive of great mischief, and in time of war of absolute ruin to the country.

If this bill is sufficiently guarded to protect these points, of course I shall give it my cordial approbation. If not, it ought to be subject to some revision.

Mr. ORR. The gentleman has raised two points—one in reference to disclosures of matters confided to counsel, and the other in reference to matters arising in questions of diplomacy. With reference to communications made to counsel I will say to the gentleman from Indiana, although he thinks there should be a great public necessity to justify the passage of a law to extract a secret of that kind, that the common law of England does not exempt a witness from testifying upon any such ground. He is not excused from testifying there. That is the common law of Parliament. It is not a statute of the British Parliament at all. Either the House of Commons or House of Lords can extract such communication. The rule is different before the Houses of Lords and Commons from that which exists in the courts. If the gentleman have any doubt I will refer him to the authority upon it. The section to which I would call attention is the law in "Practice of Legislative Assemblies," by Cushing; a very good book as far as I have had an opportunity of examining it, and very correct. It was read, I understand, by my friend from Maryland.

With reference to the other suggestion, I can hardly conceive such a case. I am free to state that the committee did not look to it; but I am prepared to express, myself, an individual opinion with reference to the secret-service fund. It is suggested to me by the gentleman from Georgia [Mr. Stephens] that this House has already exercised the power and authority of forcing a disclosure as to what disposition had been made of the secret-service fund. And it is right and proper that it should be so. Under our Government—under our system of laws—under our Constitution—I should protest against the use of any money by an executive authority, where the House had not the right to know how every dollar had been expended, and for what purpose.

Mr. STEPHENS (interrupting). A committee of the House once took testimony in relation to the secret-service fund. An ex-President of the United States was examined before them. That committee came in and stated to the House that they thought it proper that the facts disclosed before them should not be made public, and it was sealed up. The testimony completely exonerated the party accused; and the House never had it divulged, although the committee had got it and was ready to give it to the House if the House required it.

Mr. DUNN. I would inquire if that was not a case where the party accused—through his friends on this floor—asked an investigation?

Mr. ORR. It is immaterial whether it was or not. That is a matter of no sort of consequence. If the party accused had the right to have the manner in which he expended the secret-service fund inquired into for his defense, a majority of this House has the same right to have the same matter inquired into for his accusation. But my friend from Indiana is, as the House knows, a shrewd lawyer. He attacks this bill by putting instances of the extremest cases. I defy him to point to any law on a statute book anywhere, whenever passed by human ingenuity, that some case might not be cited to show that that law would do injustice, or that it did not meet entirely the views of right and propriety? These are extreme cases. The object which this committee had in view was, where there was corruption in either House of Congress, to reach it.

My friend from Kentucky and others say, "refer this bill to the Committee on the Judiciary." Now, Mr. Speaker, I intended to speak of my associates on the select committee, excluding myself; and I undertake to say that there is as much legal ability (without meaning any disrespect to other gentlemen) in the members of the select committee, excluding myself, as there is in any committee of this House. Go to the reports of the supreme court of Georgia, and see the reputation of one member of that committee [Mr. Warner]. Go to the records of the Supreme Court of the United States, and you will see the evidence of the reputation of another member of that committee [Mr. Davis, of Maryland]. Go to the courts of Pennsylvania and New York, and you will find evidence of the reputation of other gentlemen of that committee [Messrs. Ritchie and Kelsey]. And I undertake to say, that the select committee are better prepared to report a bill on this subject than any other committee in the House. And why? Because they have been tracking up this matter for the last ten or twelve days, and they know what legislation is necessary to extort that which they know is material to the vindication of the integrity and reputation of this body. There is, therefore, no committee so competent to frame a bill as the select committee; and the select committee have framed it with care. It is true, that subsequently the gentleman from Maryland submitted this morning a substitute. It was more convenient to be presented in that form. It is really a very slight change from the bill reported yesterday. The amendments are in some instances merely verbal. There is no material change from the bill as reported yesterday, unless the adding of the provision that a witness swearing falsely before that committee should not be exonerated from the pains and penalties of perjury. That is the only material change.

My friend from Kentucky says, "You are going to adopt this monstrous proposition, that the House, as in the case of the party whom we had before us yesterday, having exercised authority, and that authority being sustained, is now going to transfer its power in the matter to the courts." Why, my friend from Kentucky has not read the bill; or, if he has read the bill, he has not read it with his usual care. The bill expressly states that, *in addition to existing pains and penalties*, he shall be subject to the pains and penalties of fine and imprisonment; and that, for the reasons which I stated yesterday, if a thing of this sort occurs five weeks before adjournment, there is no punishment that can be inflicted adequate to force the witness to disclosure. He said further—and I confess I was very much surprised to hear the argument from him—that by this bill you send a party to the courts of this country, having protected him from the consequences of his crime by this special law; and he thinks it a great enormity that he who has attempted to bribe a

member of Congress should be excused by this law from being convicted before a court, and that the member should not be excused. Perhaps he did not say that, but his argument looked to it.

Mr. H. MARSHALL. Will the member from South Carolina let me set myself right?

Mr. ORR. Certainly.

Mr. H. MARSHALL. Your law now would punish equally the member who receives the bribe and the party who offers it. Your proposed law says to the party, "Come here and testify, and you shall not be answerable anywhere for the facts or acts in regard to which you testify." He does testify. On his testimony a member of Congress is expelled and indicted before the courts. Your witness is called upon as a witness to sustain the indictment in the court-house. He stands there and says, "I will not testify, because I would criminate myself." Your law does not protect him in the court-house——

Mr. ORR. It does protect him in the court-house.

Mr. H. MARSHALL. Look at your law again. It does not protect him, except that he shall not be punished for the fact or act in regard to which he testifies; but whenever the party who has testified before the committee goes before the court, he says, "I can not give testimony with regard to this matter here without subjecting myself to criminal prosecution"——

Mr. ORR. He will not be required to testify.

Mr. H. MARSHALL. Exactly so; and then your member of Congress will be cleared in court after being convicted in Congress.

Mr. ORR. The argument of the gentleman from Kentucky, then, is this, that rather than allow a member, perchance, to escape conviction in court, running the hazard that the witness would be by law exempted from testifying, he would allow a corrupt member, if there be such, to continue to sit upon this floor.

Mr. H. MARSHALL. Not at all.

Mr. ORR. The great object intended to be accomplished by this bill is to enable the House to purge itself; and it is more important that the House should purge itself than that an individual should be convicted before a criminal court.

Mr. H. MARSHALL. As a matter of justice to myself, permit me to say, that instead of the gentleman's conclusion being the right one, the proper conclusion to draw from my position is, that I would make the law to cover all cases.

Mr. DAVIS, of Maryland. Allow me to make a suggestion at this point. The witness, under this bill, who shall have been *particeps criminis*, and shall have testified before a committee of Congress, will not be exempted from testifying before a court of justice, to convict a member of bribery, because he is pardoned by the law for the act, and can not be prosecuted. It is not, so far as his case is concerned, a punishable offense before the courts of the country.

Mr. ORR. And with the interpretation put on it by the member from Kentucky, the House and country will not secure the object we have in view, that is, to get clear of a corrupt member, if perchance one should be in our midst. When an investigation is instituted to see whether bribery and corruption, and other improper influences, have been resorted to to influence members of Congress, we desire to be able to get that information before us which will enable the House to purge itself of a corrupt member; for, sir, I imagine that law itself would be of little moment, or little avail, if the great source and fountain of all law was corrupted. It is important, therefore, in that aspect of the case, that the bill should pass, so that we may compel disclosure.

Now, as to the alleged retroactive operation of the bill, I do not think the gentleman from Kentucky would maintain the proposition in any court of justice, that this bill, if enacted into law, will be an *ex post facto* law. He knows well that it is not such a law. It would be technically *ex post facto* in such a case as this: If it would punish the witness whom we had before us yesterday, for having refused to answer the day before yesterday the questions propounded to him by the special committee, then the law would be *ex post facto*. But it will not do so. He is not liable under this bill, in any such aspect of the case. If the bill passes, and the committee think proper to recall him, and he refuse to answer their questions, he may be indicted under it. But, as I stated yesterday, this committee of investigation have found the necessity for such a law as this in more than one case, and that is the reason why a law in reference to this individual case would have been in sufficient.

Mr. SAVAGE. I understand the gentleman to say that a law of this kind has been found to be necessary in more than one case. I would ask him to state whether he knows of any precedent where Congress has changed the great rule of common law as I understand this bill proposes to change it—the rule that no man shall be called on to criminate himself in giving evidence.

Mr. ORR. The gentleman speaks of the common law. I refer him to page 397 of the book from which I have already quoted, to show him what in the common law is relative to parliamentary bodies. He will see that this is not in violation of the common law.

Mr. SAVAGE. Has Congress in any instance changed this law?

Mr. ORR. Suppose there are no such instances?

Mr. SAVAGE. The gentleman misunderstands me. Look at the laws passed here relative to dueling. The Congress which passed them thought it necessary, in order to reach that great offense, to set aside a rule which had obtained in all other instances, and this is the only instance I know of where Congress has changed the great rule of the common law. I think the gentleman will remember that the same rule of law obtains in all the State courts except in one or two instances. In my own State, in cases of gaming and bets on the election, the great rule of the common law has been changed.

Mr. ORR. I am very much obliged to the gentleman for his suggestions. It seems, then, that this is not the first instance where, for the purpose of procuring evidence, there has been an invasion of the usually-received rules of evidence in courts of justice. It is absolutely necessary that this bill should be passed now by the Congress of the United States, in order that it may ferret out and expose all the corruptions that have been charged on members of this House, if any such corruptions exist; and it is necessary that it should be passed speedily.

Gentlemen talk about hasty legislation. Why, sir, there are few bills which come before this Congress, or which pass it, that have had more full and deliberate consideration—certainly not in the committee. It has been fully debated. It was thoroughly considered in the House yesterday. It ought to pass, and pass speedily, so that it may go to the other branch of Congress. If it does not pass, the responsibility will rest then with that body. We have but forty or forty-five days of this session remaining. After this committee has finished its investigation its report must be submitted and printed. That will consume time; and if we are to be delayed in this way, the result will be that the House will not be put in possession of that report until at the heel of the session, when the excuse will be then that the appropriation bills are pressing on us, and it can not be taken up. This bill,

then, requires not only action but requires prompt action. I undertake to say, sir, that no committee will be able to prepare a bill to which there will not be objections; and if the House intends to pass a bill—if it intends to say to recusant witnesses that, for continued contempt, they shall suffer more than mere imprisonment from now to the end of the session, we must pass it without reference to any committee. Time is all important, and I shall consider the reference of the bill as a defeat of the measure. That will be my construction of it. I think that that will necessarily be the result and consequence of the consumption of time by such a reference. Looking to the circumstances under which we are placed, I think gentlemen had better take the bill as it is. We all have oftentimes to vote for measures that we do not altogether like. When the good predominates over the bad, and a speedy remedy is required, it is better that it should be taken. If it shall be found afterwards that any individual has suffered hardship thereby, the same power can go to work and apply the corrective.

I ask the House to vote down the motion to refer to the Committee on the Judiciary; to pass the bill and let it go to the Senate; and thus to give some efficiency and vitality to this investigation which this House has instituted. The substitute proposed by the gentleman from Maryland (Mr. Davis) is before the House with the consent and by the instruction of the special committee. They desire that it shall pass instead of the bill first introduced.

The question now being on the motion of Mr. H. Marshall to refer the bill and amendments to the Committee on the Judiciary,

Mr. Billingham demanded the yeas and nays. Ordered.

The question was taken, and it was decided in the negative—yeas, 71; nays, 132. (Globe, p. 432.)

So the House refused to refer the bill to the said committee.

The question recurred upon the amendment offered by Mr. Ritchie to the original bill.

Mr. RITCHIE. The amendment offered by the gentleman from Maryland to-day supersedes the necessity of mine, and with the permission of the House I will withdraw mine. Withdrawn.

The question was then taken upon Mr. Davis's substitute, and it was adopted. Bill engrossed and read a third time.

Mr. Orr moved the previous question upon the passage of the bill.

The previous question was seconded, and the main question ordered to be put.

The yeas and nays were ordered.

Mr. WASHBURN, of Maine. I desire to know whether the question is divisible, as I desire a separate vote upon the different sections of the bill.

The SPEAKER. It is not divisible.

The question was taken; and it was decided in the affirmative—yeas, 183; nays, 12. (Globe, p. 433.)

So the bill was passed.

UNITED STATES SENATE—COMPULSORY TESTIMONY BEFORE COMMITTEES OF CONGRESS.

JANUARY 22, 1857.

[Globe, p. 425.]

During Mr. Crittenden's remarks a message was received from the House of Representatives, by Mr. Cullom, their Clerk, announcing that

the House had passed a bill (H. R. No. 757) more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony.

Mr. BUTLER. I understand it is necessary that the bill which has been received from the House of Representatives should be acted on immediately, if at all; and, therefore, I ask my friend from Kentucky to yield the floor, so as to allow it to be referred to the Committee on the Judiciary.

Mr. CRITTENDEN. I do not wish to give to my few remarks such importance as might be given by recommencing a speech.

Mr. BUTLER. I do not wish to interrupt my friend except so long as is necessary for the reference of the bill.

Mr. TOUCEY. I hope the bill will be taken up by general consent and passed at once without a reference.

Mr. CRITTENDEN. I will yield the floor so as to allow the bill to be referred.

The bill was read twice by its title.

Mr. STUART. Is it desired to pass the bill?

Mr. BUTLER. It might as well be passed at once if there be no objection.

Mr. STUART. I insist on its being referred.

The bill was referred to the Committee on the Judiciary.

Mr. Mallory, in the course of his remarks, yielded the floor to allow the bill to be reported back.

Mr. TOOMBS. I am instructed by the Committee on the Judiciary to report back House bill No. 757, more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony. The committee recommend that the bill be put on its passage at once. It is important with reference to some investigations which are being conducted by the House of Representatives. I presume there can be no objection to the bill, and I hope the pending business will be laid aside informally, by unanimous consent, that this bill may be taken up.

The PRESIDENT *pro tempore*. The Chair will receive a motion to consider the bill by the unanimous consent of the Senate.

Mr. WILSON. I think that the bill had better go over till to-morrow morning.

The PRESIDENT *pro tempore*. A single objection prevents the consideration of the bill now.

JANUARY 23, 1857.

[Globe, p. 434.]

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CONTUMACY OF WITNESSES.

On motion of Mr. Toombs, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 757) more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony.

The PRESIDENT *pro tempore*. If no amendment be proposed, the bill will be reported to the Senate.

Mr. HALE. Mr. President, before this bill is reported to the Senate I hope that some of its friends will state the object to be effected by it and the necessity for it. I know nothing about the bill except what I get from the papers and from its own face.

The rules of Congress require that every bill which may be introduced shall be read on three several days, unless by unanimous consent that requisition be dispensed with. I see that this bill has been read three several times in the House of Representatives and two several times in the Senate, and these readings have all been had in a single day. The bill was introduced into the House of Representatives, it would seem, on the 21st of January, and passed through that House on the 22d; and on the 22d it was introduced here, read twice, and referred to the Committee on the Judiciary, and reported back while the Senate was in session; and it now comes up on its passage. I am opposed, in the first place, sir, to all such hasty legislation. I am opposed to all legislation that is hurried in this manner out of particular transactions which have given rise to it. It is not worth while to shut our eyes to the circumstances which have given rise to this bill. I am in favor of, and will vote for, a bill with proper safeguards which shall compel the attendance of witnesses before either House, or before the committee of either House, and enforce a proper penalty for a neglect to appear or a refusal to answer.

But as I understand this bill—I may be mistaken in it, for I have not had more time than anybody else has had to examine it—it proposes to strike out of existence a principle which has been considered necessary to the protection of individual rights in every court in every State of this Union. It proposes, if I understand it, to strike down a principle which has been held sacred for centuries wherever the common law is practiced—the principle which protects a witness from answering to matters which shall criminate or disgrace himself. This bill makes no exception of that sort. Upon its face it purports and intends, if I understand it, to remove any exemption of that sort, by providing that the witness shall not be held liable to any criminal indictment for anything he may disclose, and that the matter which he discloses shall not be used in evidence against him.

In the first place, I ask the friends of the bill if they can do any such thing? All on earth you can do is to provide that he shall not be punished in any court of Federal jurisdiction; but it should be remembered that in all human probability ninety-nine hundredths, or at least a very great proportion, of the matters we propose to inquire into before a committee of the House of Representatives, or a committee of the Senate, will not have transpired within this District, and probably will not be subject to the cognizance of the Federal courts. Then you propose to put a witness before a committee of the House of Representatives, or of the Senate, and under penalty of twelve months' imprisonment in the penitentiary, you tell him that he shall answer, and you undertake to hold out a protection for him in case he should criminate himself, by providing that his own testimony shall not render him subject to any criminal prosecution. Does not everyone see—certainly it strikes me so—that that will be entirely nugatory when he gets into any State courts in this Union? You may indict him for any transactions he discloses which are criminal or disgraceful in their nature, in New York, Pennsylvania, Massachusetts, or New Hampshire, and he can not plead the statute that you have passed to protect and shield him.

I think the bill is defective in the first section. It creates a new offense, and then it says that he shall be liable to indictment for it as for a misdemeanor in any court of the United States having jurisdiction of it. Well, sir, what court of the United States has jurisdiction of an offense which you do not create until this moment? It seems to me that the bill should have gone on in express terms to confer juris-

diction; but that is a matter upon which I do not wish to dwell much.

I do dwell upon this; I say it is contrary to the spirit of liberty; it is contrary to the spirit of law; it is contrary to the genius of every constitution of our States, to undertake to say to a man that he shall not be excused from answering because the matters may criminate himself. This bill is broader than that. It gives no protection to confidential communications between counsel and client. The bill obliges a counsel to disclose them. It will take in the priest of the Catholic Church, and compel him to disclose confessions which have been imparted to him under the most sacred obligations which can bind the conscience of man. This bill proposes to strip away all these protections and defenses that the wisdom of ages has secured, and to put a man before a committee of either House of Congress under circumstances in which he is not put before any court of this country.

Now, sir, what are the circumstances under which this bill arises? They are matters of common and public notoriety. We are informed by the papers, and by the reports of the proceedings of the other House, that not long since a resolution of the following purport was passed:

Whereas certain statements have been published charging that members of this House have entered into corrupt combinations for the purpose of passing and preventing the passage of certain measures during the present Congress; and whereas a member of this House has stated that the article referred to "is not wanting in truth;" Therefore,

Resolved, That a committee consisting of five members be appointed by the Speaker, with power to send for persons and papers, to investigate said charges, and that said committee report the evidence taken, and what action in their judgment is necessary on the part of the House without any unnecessary delay.

That is a matter of the public history of the times. I believe it is equally notorious that when that committee was organized a correspondent of one of the newspapers in the city of New York was summoned before them, and in the course of the examination he came to a point where he refused to testify, and he was then ordered into custody by the House of Representatives. Under that state of facts, the committee before whom he had been summoned reported this bill, which was passed with the haste which I have mentioned by the House of Representatives. I am not going to stand here as the special advocate of the press, and especially of the press of New York City. I do not feel under any peculiar obligations to that press, or to that particular locality. I was once infamously assailed by one of the leading presses of that city; and when I denied its charges, in general and detail, and courted investigation, and dared them to the proof, they only took the blackguard's privilege of reiterating them over again; so that I stand under no peculiar obligations to them. Nor, sir, do I wish to indulge in that wholesale denunciation of this class of citizens which has been indulged in in some other places, according to the accounts that have reached us through the public press. I believe newspaper editors are very much like any other numerous class; they contain many of the most worthy and respectable men to be found in the community, and many of the most corrupt scoundrels that can be found in the community. When I say that, I say of the press what may be said of almost any other class of men. I know some conductors of newspapers that I am proud to number among my friends—some of the most honorable and respectable gentlemen that I know in any class; and I do not stand here to denounce them, nor to say that everything which comes from a newspaper attacking the integrity of Congress, or any particular member of it, is unworthy of consideration or respect.

But, sir, I tell you, and I tell Congress, that if you make this issue

with the newspaper reporter whom the other House has got in custody, or if you make this issue with the humblest individual that walks the streets, if you make it with a street scavenger that sweeps the streets, he will go to the country and he will beat you on it. You can not stand on it. If Congress put themselves in that attitude, and pass this bill for the purpose of crushing that newspaper reporter, or anybody else, I tell you the end of that conflict is not doubtful. That man will have the public sympathy with him, right or wrong; because, when you pass this bill, no matter how wrong he is, you are infinitely more wrong than he. In that controversy you are bound to go to the wall; and the little editor, or correspondent, or whatever he is, with his goose quill, will be found more potent than your Sergeant-at-Arms, with his mace and all the ensigns of your authority. Why? Because, when you undertake to pass this bill, you undertake to step over a barrier to which that man has a right for his protection; you override his constitutional right, to require that he shall not be held to answer to any matter that may criminate himself. It is not enough that you exclude him from matter that may subject him to a criminal prosecution. That is not the protection of the law; the protection of the law goes further than that; and if it be not well settled, there is certainly very good authority for the position that the protection of the law goes so far that a man is not bound to answer to a matter that disgraces himself. Such, sir, is the authority of the best legal writers upon the law of evidence.

This bill, in its broad terms, will take away the protection which a counselor has. I speak to a Senate of lawyers; I speak to men whose lives have been passed in a position where they have been trustees of the rights of their fellow-citizens; and I ask any man who was ever worthy to stand in a court of justice—I ask you, sir, I ask Senators on this floor, if it is in the power of this Congress, if it is in the power of any government that God ever permitted to live on the earth, to pass an act and pile up pains and penalties so numerous and so cumulative that they can compel an honest or an honorable man who has been intrusted by a client to disclose any of his secrets? No, sir, you can not do it. You can not take the humblest priest in the church that believes in the rite of confession, and pile up penalties enough to make him disclose facts which have been communicated to him under a pledge of secrecy, which is more obligatory on his conscience than any laws you can pass. Neither, sir, can you, in this case, by hurrying through this bill, produce the effect to which this bill looks; and that is, compel the disclosure of facts in the particular case which gave rise to this bill in the other House.

I think I saw by the papers—I believe it is in order to refer to what we read in the papers—that threats have been thrown out of this sort: “We will put the bill on its passage, and let us see who will dare to oppose it.” Insinuations have been thrown out that there are corrupt members of Congress; that corrupt propositions have been made by members of Congress; and it is said that the charge has the tendency to throw suspicion upon the whole body. That argument may have just exactly as much weight in the minds of those to whom it is addressed as it is entitled to in the view of those who make it. I have nothing to say for myself, how far, or how much, or how little, it may affect me; but I say, that under no circumstances will I consent to pass a bill which I believe to contain a vicious principle, under the pressure of the existing circumstances that now surround Congress. It is always better to take time enough. I think the Greeks had an old maxim which was considered of so great value that it was put in

the school books when I learned what little of Greek I used to know, and translated into plain English, it read thus: "Hasten slowly."

Mr. FESSENDEN. The Senator alludes to the Latin, "*festina lente*."

Mr. HALE. The Latin is only a translation. The best rule of legislation, in regard to these matters, is to "hasten slowly."

Again, sir, I believe that this bill, in the objects for which it is proposed, if it be not liable to the objection that it is retrospective in its character in precise terms, is liable to that objection in its spirit and intent. A retrospective law has been well defined by some author—whose name I do not recollect, but he was a very respectable gentleman—to be a law which applies a new rule to an existing case. When a law is passed, not in reference to an existing case, but in reference to a state of existing facts out of which a case is to be made, if it be not liable to the objection that it is retrospective in its terms, it is certainly retrospective in its spirit, and in its spirit is liable to that condemnation.

I think nothing can be lost by a little delay on this bill, by giving gentlemen time to examine it. I have no professions to make on the subject; but I will say, voluntarily, that I am perfectly willing to pass a law which shall be potent enough in its penalties to compel the disclosure of all facts which either House, in its judgment, may consider to be necessary for the proper prosecution of the business which is confided to it by its constituents and by the Constitution; but I do not think the exigencies of the case require exactly such a bill as this. I think Congress should hesitate a long time before they disregard this salutary provision of law, which has been considered of such regard so long—that a witness shall not be compelled to disgrace himself. I think they will find, as I have before suggested, that it is not the mere protection from a criminal prosecution that the law secures to a witness; but he has a right to be protected from things that will subject him to disgrace. I wish to read a section from an approved author on evidence, Mr. Greenleaf. In the first volume of his work on Evidence, section 454, he says:

Where the answer, though it will not expose the witness to any criminal prosecution or penalty, or to any forfeiture of estate, yet has a *direct tendency to degrade his character*. On this point there has been a great diversity of opinion, and the law still remains not perfectly settled by authorities.

Mr. Greenleaf then goes on to cite a great many authorities, and lays down what he thinks is a middle line. Mr. Phillips, in a note to this text, giving the arguments of those who sustain this principle, that a witness shall not be thus compelled to testify, says:

They argue, further, that it would be an extreme grievance to a witness to be compelled to disclose past transactions of his life which may have been since forgotten, and to expose his character afresh to evil reports, when, perhaps, by his subsequent conduct, he may have recovered the good opinion of the world; that if a witness be privileged from answering a question, though relevant to the matter in issue, because it may tend to subject him to a forfeiture of property, with much more reason ought he to be excused from answering an irrelevant question to the disparagement and forfeiture of his character; that in the case of accomplices, in which this compulsory power of cross-examination is thought to be more particularly necessary, the power may be properly conceded to a certain extent, because accomplices stand in a peculiar situation, being admitted to give evidence only under the implied condition of making a full and true confession of the whole truth; but even accomplices are not to be questioned in their cross-examination as to other offenses in which they have not been concerned with the prisoner; that with respect to other witnesses the best course to be adopted, both in point of convenience and justice, is to allow the question to be asked, at the same time allowing the witness to shelter himself under his privilege of refusing to answer.—*Phil. and Am. on Evid.*, pp. 917, 918; 2 *Phil. Evid.*, p. 422.

All these protections this bill proposes to dispense with; and the only thing which it proposes to give to the witness as a shield and a remedy when you have broken down these provisions, is simply that he shall not be subjected to a criminal prosecution; that he shall not be held—

to answer criminally in any court of justice or subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify before either House of Congress, or any committee of either House, as to which he shall have testified, whether before or after the date of this act.

The bill in its terms is broad. It covers the whole land. It does not propose to confine the scrutiny entirely to the District of Columbia. The only place in which reference is made to any court that is to try the offense is in the concluding part of the third section, which says:

It shall be the duty of the Speaker of the House or the President of the Senate to certify the fact, under the seal of the House or Senate, to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

Then if the bill has any action outside of the District of Columbia (and certainly it has) this section, if it has any force at all, subjects to the jurisdiction of the grand jury of the District transactions that may have occurred in any State of this Federal Union.

For these and various other reasons which might be suggested, I hope the bill will be laid over, or that it will be recommitted. It is a matter of public notoriety that the Committee on the Judiciary can have given it but a mere formal examination, because, within ten minutes after it was referred to the committee, the Senate having been in session all the time, it was reported back, and asked to be put on its immediate passage. I think a bill making such vital, such important, such radical changes in the law, as this does, should not be pushed through in this manner. If forced to its passage in its present state, I am compelled to vote against it.

Mr. TOOMBS. Having reported this bill, I should have accompanied it probably with some statement; but I did not suppose it would meet with objection from any quarter on account of very peculiar circumstances to which the Senator from New Hampshire has referred.

It seems from the statement of the Senator that the House of Representatives have been pursuing an investigation in reference to crimes alleged to have been committed by members of their own body. They find themselves suddenly brought up on one of the most controverted questions of constitutional law—one extremely doubtful and unsettled, and on which, I doubt not, I myself should differ with a large majority of this body. To settle that point, or at least to enable them to proceed with this legitimate investigation which is demanded by their own honor as well as by the public interest, they propose to pass a new law. That new law is now before us. It is not liable to any of the objections made by the Senator from New Hampshire. First, it is not an *ex post facto* law. It does not make any action criminal which was innocent before. It is a universal rule of all our courts of justice, both Federal and State, and wherever the common law is administered, that it is perfectly competent at any time for the legislature to alter the remedies, leaving the fact. The fact which they are ascertaining here is, has there been corruption? Has there been bribery or an attempt to bribe a member of the House of Representatives, or an attempt to be bribed by a member of the House of Representatives, which is made criminal by a statute passed by Congress? In pursuing that investigation,

in order to punish the guilty, as they have a right to do by a law of the land, not by parliamentary privilege (the great difficulty and trouble heretofore have been on that point), but by a statute of Congress making it criminal—in endeavoring to investigate these facts according to the usage and necessities of parliamentary bodies, they call for some of the very persons who make these charges, and they are answered that a point of honor prevents thieves from telling on one another. The real question is, shall this honor among thieves prevent the administration of public justice? The gentleman who has been intrusted with this felony, for honor's sake can not disclose it! That is the point to which the House of Representatives find themselves brought.

Again, from the proceedings alluded to by the Senator from New Hampshire, it appears that a large portion of the House of Representatives and of this body suppose they have the power, sometimes very vaguely called an inherent power, to punish for contempt. Even the committees of this body have held, somehow or other, that we have got hold of the powers of the British House of Commons. I am free to confess I totally disbelieve that doctrine, and never did understand it. I know of no way of bringing laws to operate within these 10 miles square except by the Constitution and the laws made in pursuance thereof. We brought no common law here, either parliamentary or any other. We have no other law but what we put here. That is my judgment, but I do not intend to go into that point. When the committee came to make this witness testify, he replied: "You have no power; or if you have, I will disobey your authority." In such a case, some say there is no punishment; others hold that you may punish; but at all events the punishment is inadequate. And they say, it being our duty and our clear right, under the statute which we passed ourselves, to punish our own members for corruption, we will seek the ordinary modes which are necessary in the exercise of that power to ascertain the truth of the allegation. That is all this bill seeks to do. It says a witness brought before a committee to investigate these facts according to law, and the usages of parliament, shall testify; and if the witness will not do so, then the question arises as to the power to punish him—in the first place, whether it exists at all, and then, what is its extent? If this bill sought to make an innocent past action criminal, or sought to make anybody punishable for an act not punishable before, it would be liable to constitutional objection; but it does no such thing. It is prospective in its terms. It says, whenever hereafter a witness, brought before a committee of the Senate or House of Representatives, shall refuse to testify, the punishment for this act of contempt shall be so and so. It therefore has reference to no past act. There may be witnesses who have in their bosoms facts that may be important to the administration of public justice as to events which transpired ten, twenty, or fifty years ago; and they can not protect themselves on the ground that they got possession of a material fact for the administration of justice before the law was passed. A law to operate on such a case is not an *ex post facto* law.

The Senator from New Hampshire mistakes the fundamental meaning of an *ex post facto* law in the Constitution of the United States. This bill affects to punish nobody for anything he ever did. It professes to make nothing a crime that was innocent yesterday; it professes in no way to reach an act in the past, criminal or innocent; and therefore by no possibility can it be made an *ex post facto* act. It is wholly prospective according to the terms of this act. Whether a

case may arise to-morrow or Monday under it, does not make it *ex post facto*. It punishes nobody for anything that was ever done before it became a law. It makes criminal no act hitherto innocent; and therefore it is far from that objection.

In the next place, we are told that it alters the common law rule. I apprehend 99 out of every 100 acts passed since we have separated from Great Britain alter the common-law rule. That is what we want with statutes; that is exactly what you want with legislatures, and for nothing else in the main but to alter common-law rules. It is perfectly competent for Congress, within the scope of the powers given them by the Constitution, in whatever they legislate on, to alter common-law rules. Some States do not adopt the common law at all. The common law does not obtain in all the States of the Union; it need not obtain in any. It obtains in none except by adoption by statute. When the legislature of a State declares that the common law shall be the rule for the administration of justice between man and man until altered, then it is the law; and it is the law because it is so declared by the legislature. It is not the law merely because it is the common law. It is not our law because it was the law of our ancestors; but it is our law because we will it according to our legislative forms. Therefore it is no objection to the bill to say that it alters the common-law rule, if that be not a good rule. We have found, throughout the States of the Union, as far as my researches have extended, that the old common-law rule, which the Senator has mentioned, is inadequate. We have made confederates testify in all the States of the Union without exception as far as my investigations have gone, for the advancement of public justice. We apply the principle to gamblers—

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Mr. TOOMBS. It is proposed, Mr. President, in the clause of the bill upon which the honorable Senator from New Hampshire has commented, to alter the common-law rule, I grant, and I think for substantial reasons. It was always a common-law rule, and it is one of the provisions of this bill, the necessity of which must be very apparent, that a witness should be compelled to testify before a proper tribunal. The exemption allowed was that he should not be compelled to criminate himself. This rule has been modified in many States of the Union so as to compel him to testify even though he discloses his own crimes; but they have preserved the fundamental principle of the rule by providing that his own testimony under such circumstances shall not be used against him in any criminal prosecution.

Mr. HALE. With the consent of the Senator I will ask him a question. I have not examined that point; but if he has, I ask, does not that apply to a case where the witness voluntarily discloses. Is there any case where an accomplice is compelled by law to disclose, and this protection is held out?

Mr. TOOMBS. The gentleman is mistaken. I am aware of the distinction to which the Senator alludes. Even at common law a witness might voluntarily criminate himself. There is no rule of law against that; but it was usual for the King's counsel at common law not to prosecute one who disclosed the truth, although a pledge not to do so did not precede the disclosure. It was generally the understanding that if he would tell the whole truth, and the King's counsel was satisfied he had told the truth, and thereby aided the promotion of public justice, he should be allowed to go without delay.

The laws of the different States, my own among the number, compel

accomplices to disclose the facts with the very limitation contained in this bill. The principle is universal, as far as my knowledge goes of the statutes of the different States. It is considered that the State has a right to compel a criminal to swear against his fellows. The legislature have thought proper (probably so as not to offer too great a temptation to perjury, avoiding the odious ancient doctrine of torture, to compel a confession, but as an inducement to tell the truth) to declare: "Whatever you say, if public justice demands that you shall criminate your confederates in crime, shall not be used against you." An illustration is suggested by the Senator from Mississippi [Mr. Adams] as to the law in my own State and others. The crime of gambling is almost impossible to be proved without the testimony of *particeps criminis*, and persons might always escape if all present and participating were excluded from testifying. Hence, the gambling laws of the different States would become nugatory on account of the fact that, if you bring up one of the parties, he will say: "My testimony will criminate myself, and therefore I am excluded." The States, therefore, said: "You shall testify as to the crime of your confederates, but you shall be protected, and what you testify shall not be given in evidence against you, and to you shall come no harm on account of it." It was considered more important that society should be able to punish crime and put down this particular vice than that the individual citizen should have the supposed right of saving his own character.

The other rule to which the Senator from New Hampshire refers never was a rule of universal acceptance, and never was sound in this class of cases. It is not the disclosure that makes any witness infamous; it is the act. If he has the money in his hand, or if he has sought it, there is the brand. It is not in telling the fact, if he tells it. Nothing he says can make him infamous, if he does it according to the laws of his country, unless he has committed a crime. All they require of him is to tell some fact within his knowledge that has transpired. Nothing he can swear to can make him infamous unless he is already infamous by the act which he discloses.

Well, sir, shall society be defeated in punishing the crime that a man may cover his individual infamy? That is the only question which can arise under this bill. Is it better for the commonwealth that the infamous man shall be protected from declaring his own infamy or that society shall be able to punish the highest crimes against itself? I say if that was the common law (which I deny, and the gentleman's own authority admits it to have been questionable), it is competent for us and for the States to change the common law when it is requisite to do so in order to reach this class of crimes which are said to be rife. From their very nature they are not discoverable without extraordinary means. Who can give the information except the persons who offer or accept bribes and the agents who go between them? How is it possible to discover this particular crime unless you compel some of the *particeps criminis* to disclose it? I know it is a bad chance, but it is the only chance.

I think the House of Representatives very justly consider that it is due to their own honor, it is due to the high interest of the country, that they should protect the reputation of the legislative department by expelling its unworthy members or by vindicating the character of the whole from the infamous slanders of a licentious press and its miserable minions who are allowed to go about these halls. Then, sir, the simple question is, does the Senate believe it to be better that corruption, that bribery should continue to exist and poison society in the

very head—in the fountain spring; that corruption should not be reached; that there should be no punishment for it; that there should be continued immunity for it; or that some of the criminals shall be compelled to testify before committees of Congress or courts of justice? That is the question for the Senate. If you believe protection for not making public the infamy of the infamous is a higher duty of the legislature than bringing culprits to punishment, the reasoning of the Senator from New Hampshire is unanswerable, but on no other principle. I hold that our first duty is to society. These are crimes which, from their peculiar nature, are such that we have a right to compel anybody to disclose. Congress has not before legislated upon it; and I would fain hope that it has been for the same reason that the Romans had no law against fratricide for eight centuries—the crime had never existed. We had no law heretofore—in seventy years of our existence—upon this subject of compelling witnesses to testify, but the remedy must come when the offense comes.

A charge is made in such a form that it is due to the public that it should be inquired into. Then give the House of Representatives, give yourselves every possible means that is justified by precedent and the rights of the citizen to inquire into it. This is not one of the citizen's rights. It is an exemption to him; it is an ease and favor to him that you do not make him testify against himself. It is out of tenderness for the criminal that that is not done. We extend to him that tenderness; and probably we have a better chance against perjury by doing that than if we punished him, and therefore it may be to the interest of society. The bill is liable to no other objection than that it changes the common law-rule. Why, sir, we have altered the common law and we ought to change it when the reason for it has failed.

As this is a matter so nearly concerning the honor of the House of Representatives and the interest of the country, I hope, though the bill in some respects may be subject to criticism, though it may give too large a measure of relief, though it might be made more certain in some of its provisions, though it might be made more effective, we shall neither delay nor balk the other House in so plain a question as this is, in which they are simply seeking to compel those who know anything concerning this species of crime to come forward and testify. I am for giving it to them quickly and at once. It is due to justice, to the House, and to the country.

Mr. TRUMBULL. Mr. President, I am very much in favor of the object sought to be accomplished by this bill, and I shall vote very cheerfully for the bill as it is; but there is a section in it to which I should like to call attention, and, if I understand it correctly, I think it ought to be amended.

In my judgment, each branch of Congress has power to protect itself, and has authority to summon witnesses, to examine them, and probably to imprison them during the session of Congress; but I think it very proper that a bill should be passed particularly defining this power, and imposing additional penalties, so that neither House of Congress may be trifled with when it attempts an investigation to purge itself of unworthy members.

The provision to which I desire to call attention is in the second section. If, Mr. President, I understand that section, it provides that a party, called to testify as a witness in regard to any act or transaction, no matter what he testifies, can not afterward be indicted in reference to that matter. I fear that is going too far. Suppose a case of murder; and a committee of either House of Congress inadvertently brings

before it a witness to whom a question is put relating to the transaction without any knowledge or any intimation that they have before them the guilty party, the murderer, and he testifies—is it the intention of this bill then to screen that man from an indictment for murder? I think it is quite right and proper that the witness should not be prosecuted for an offense by himself which his own testimony alone discloses; but if the bill is intended to go so far as to screen the witness from a prosecution in regard to an act, when there is abundant testimony to convict him of the crime without resorting to his own evidence, it may be questionable if it does not go too far. The provision is this:

No person examined, and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify.

He shall not be held to answer criminally in regard to any fact or act touching which he shall be required to testify, no matter how remotely; he may be protected by the bill, as it seems to me, from indictment for a very high crime. I prefer that that provision should be changed, if I understand it correctly. I think we ought not to screen a witness from the just punishment due to his crimes when they are ascertained, because he may have been called before a committee, and given testimony upon some immaterial point, it may be, touching the crime itself; for the greatest criminal could escape, if a committee of Congress should think proper to call him before them to give evidence, whether it were done knowingly or inadvertently. I should like to see that section modified, if it means what I suppose. I shall, however, vote for the bill as it is; for I think some bill of this kind ought to be passed, and passed promptly.

Mr. WELLER. I think this bill is a very lame one. There are objections to the third section which ought to be obviated, it seems to me, before it passes the Senate. It would have been the better plan, in my judgment, for Congress to have declared that the refusal of witnesses to testify before a committee of either branch was a contempt, and proceed to punish for that contempt in the same way that the courts of justice are authorized to commit or fine a person for a contempt of court by refusing to testify. But this bill provides that, if a witness refuses to testify, the Speaker of the other House or the President of the Senate shall certify that fact to the district attorney. The district attorney will answer that whenever a grand jury may be in session, which may be two or three months hence, he will proceed to lay the case before the grand jury. In the meantime the witness is at large; there is no punishment at all inflicted on him. I think the better plan would have been to have declared it a contempt of the authority of the House, and proceed at once to inflict punishment for that contempt by imprisonment. You might at the same time subject the party to indictment in any of the United States courts for the misdemeanor thus committed. There is a gap in the bill.

Mr. HALE. All the objections, as I understand them, which have been urged by the honorable Senator from Georgia against the points which I made, apply to the whole principle. They apply to all the protection which is extended by courts of justice, because his grounds are broad. He says it is more for the interest of society to protect itself and punish crime than to protect the infamous, and that there can be no infamy in disclosing the fact, but that the infamy is in the fact itself. That applies to the whole broad doctrine; and if that is to be admitted as a sufficient

reason here, it is a good reason everywhere, and strikes down the whole doctrine of protection for a witness in any court in any place. That may be good law; it may be good sense; it may be good philosophy; but such has not been the wisdom of the world heretofore; such has not been the practice of the States of this Union.

When the honorable Senator made his statement as to what the practice had been in several States, I asked him, with his permission, if he would state to me, speaking from knowledge, whether any of the States had made it compulsory on an individual to testify against accomplices when it would criminate himself, or whether the protection to which he alluded had been extended when a witness voluntarily came forward? The Senator instanced one set of cases—I am told they do exist in several of the States—the statutes against gambling, where, for particular reasons, it was necessary to withhold this protection, because otherwise the statutes could not be enforced.

Mr. EVANS. Sending a challenge for a duel is another case.

Mr. HALE. The honorable Senator from South Carolina says they do so in dueling. Dueling and gambling are two crimes not practiced in the section of the country where I live [laughter], and, therefore, these innovations have not been introduced upon our laws. And, sir, I apprehend it will be found on examination that when exceptions of this sort have been created, they have been, as is suggested, exceptions to the general rule for the purpose of punishing a particular crime which the necessities of the case compel the law-making power to adopt. But I believe, as a general principle, the wisdom of this safeguard will find an advocacy in the breast of every man who is acquainted with the practices of the courts and the principles of the common law. The honorable Senator from Georgia says, and with great justice, that the common law does not exist in our country except where it has been adopted by statute, or he might have said by constitutional provision. That is true; but is it not the basis of the laws of most of the States of this Union? Is it not the substratum upon which our civil structure has been built up, with the exception of a very few States where the civil law prevails, as I believe it does in Louisiana and some other States?

The wisdom of the great body of the common law has been vindicated by the successive approbation of ages. It has been said, and well said, to be the perfection of human wisdom, and I believe it is in its great, essential, and fundamental principles. Sir, I believe, in no particular is the wisdom of that system more apparent and more manifest, than in that which protects a witness from testifying in matters that may criminate or disgrace or degrade himself. I object to putting a witness before a committee of the House of Representatives or a committee of this Senate under circumstances where his reputation may not be protected with as great safeguards as when he is testifying before the most learned judiciary in the land. Why, sir, he wants vastly more protection here. There is more necessity for these barriers for his protection when he comes before a committee of the House of Representatives, who, whatever else may be said of them, are not generally supposed to be so learned in the law as are those judges of the State and Federal courts where witnesses are called to testify and where they have this protection. You propose to strike it down, and the proposition grows out of the exigencies of a particular case; for the honorable Senator, in the remarks which he has made, admits—what everybody knows, and what it would be useless to deny—that this measure, pressed upon Congress in such hot haste, grows out of the exigencies of a particular case.

I am ready to meet that case, but I am not ready to meet it with these extraordinary provisions. I am not ready, because the authority of the House of Representatives has been defied, rightfully or wrongfully, to trample down those principles which I believe ought to be preserved, and which are essential to the protection of the rights of individuals. Sir, if you come to narrow this bill down to the single case for which you have made it, it is utterly impossible, it is utterly futile. Does any man suppose that when an individual has taken his stand, chosen his position, and made his issue, you can drive him from it by such pains and penalties as these? No, sir. All you ought to do is to make a temperate bill; a bill such as is to be applicable, not only to this case, but to all cases, and to fix such punishment and such penalties as the wisdom of Congress may deem proper and appropriate for this and for all cases for this and for all coming time; legislating from our wisdom and our experience, our calm and sober judgment, and not from the resentment and passions of the hour, which may have been excited by what we may consider, and probably justly consider, to be a wanton and insolent defiance of the rightful power of the House of Representatives. I am not going to say that that is not so. If the representations which I have had of this case be correct, I believe the individual whom the House have in custody is in the wrong, and the House of Representatives is in the right; but I believe that if you pass this bill the position of the parties will be changed, and you will magnify this man into a martyr and a hero and he will bid defiance to you.

If there is any man in the world who has an interest in having this bill passed (if anyone wishes to make fame or reputation or money out of it), it is the man whom the Sergeant-at-Arms of the House has in custody. Pass this bill, and you magnify him into a hero of the press at once. Severe as have been the denunciations of the press by the Senator from Georgia—and I am not going to deny them, for I think they hit very well a good many presses, if not all—just as they may be, the press is an institution notwithstanding. It has a hundred eyes and a thousand tongues. It sees and hears and flashes; and what we are saying here to-day goes with the lightning's flash all over the country. The press will live—it will live as long as Congress does, and a day after. The press will record our dissolution one day or other, notwithstanding what we may say of it; and, sir, the hero of the press will be the man against whom the Congress of the United States, in the year of grace 1857, arrayed themselves and undertook, by a bill of these pains and penalties, to put down. That, I think, will be the end of it.

Now, why can you not recommit the bill to the Judiciary Committee, and give them a little more time than just to run out behind your chair and whisper there so that you had to rap them to hold their tongues while they were consulting? Give them a little more time, so that they can take it to their room and prepare a bill, not for this case, but for all cases—not for this time, but for all times—one that shall commend itself to the judgment instead of to the resentment of the Senate and House of Representatives.

For these reasons I am opposed to the measure. It is no idle declamation I make, when I say I am willing to go as far as any man can rightfully go to enforce the authority of the House of Representatives and the Senate, though I did think once that I never would vote to punish any man for a contempt of the Senate. We undertook it once, and I will tell you the result of it. You remember, sir, that a man committed a flagrant breach of our privileges by publishing in one of

the New York papers a treaty pending before us in executive session. We arrested the man that furnished it, one of the "minions of the press," as they have been styled. We took him into custody, and I will tell you how we punished him. The moment he was arrested many astute men sprang up and questioned the power and authority and precedent for doing it. The result was that the Sergeant-at-Arms took him to his house, gave him the best room in his house, the best meat and the best liquor that the city afforded, and boarded him, and we paid the bill. [Laughter.] He sued out a writ of *habeas corpus*, and we paid a lawyer of this city five hundred dollars to go before a judge and tell him that we had a right to hold this man. We held him, I believe, until toward the close of the session, and then let him go and footed the bill. That was the end of the only serious attempt that I ever knew to vindicate the Senate against a breach of its privileges.

Mr. TOOMBS. It will always be the end until you pass a law.

Mr. HALE. The end will be worse when you pass this law. If you pass a temperate law, you will do better; and I will tell you what law I would have. I would have a law making a neglect to answer under the existing laws a contempt, punishable, if you please, by fine and imprisonment; but I would not go a step further. I would not go as far as to subject a man to the penalty of answering before a committee of the House what he is not subjected to answering when he appears before the Supreme Court of the United States. I would give him, when he appears before your august bodies, all the protection he has when he appears before your judiciary. When he appears before your judiciary, he is not protected by the suggestion which the honorable Senator says he understands, and which I have understood, the witness makes in this case, that he is not bound in honor to disclose. That never was a defense, and it is not a defense now. It is not a defense before a court, before Congress, or a committee of either House. But if he says, not wantonly, but honestly, when summoned before any of these august men who have occupied high judicial stations in their own States before they come here—whether the honorable Senator from Georgia is one of them or not I do not know—

Mr. TOOMBS. No; I was never on the bench.

Mr. HALE. You ought to have been. When any of these men are sitting in that high capacity, and a witness comes before them and says, "I can not answer the question without criminating myself or disgracing myself," the court is bound to let him go, and it ought to let him go.

Mr. BAYARD. Will the honorable Senator tell me his authority for that position, where the question is pertinent to the issue? I know there are conflicting decisions, but I believe the better opinion is that a party cannot protect himself from answering in a court of justice, if the inquiry is pertinent to the issue, on the ground that it will disgrace him, if it does not subject him to punishment. If it does not subject him to criminal punishment, the mere degradation or disgrace will not be sufficient, in a court of justice, to excuse him from testifying. In any case of that kind, there would not be the slightest doubt that he would not be protected in a court of justice.

Mr. HALE. So I said. The honorable Senator from Delaware asks me where I got the authority for the position that a witness will be protected from answering to a matter which disgraces him. He will find it in the very authority he has before him (*Greenleaf on Evidence*).

Mr. BAYARD. I will read it.

Mr. HALE. The honorable Senator need not read it to enlighten me, as I have read it. I know there have been conflicting opinions on that

point, but that is not the wing of the argument I was upon. I said that if the witness stated the answer would tend to criminate him, the judge would be bound to let him go. This bill steps over that. It in fact says that there shall be no protection. Although the witness says, "I cannot answer without criminating myself," this bill says, "You shall answer, although it may criminate yourself; you must criminate yourself; if you do not, we will criminate you, and we will make the very fact that you refuse to criminate yourself a crime, and subject you to imprisonment for twelve months in the penitentiary."

It may be wise as a general proposition to make such a provision; but I put it to Senators, I appeal to Senators, and ask them if this is the time or the occasion to ingraft such an important innovation on the law? I believe it is not. I believe that everything which is necessary, even under the case as it now exists, to vindicate the authority of the House of Representatives in its fullest extent will be to say that a refusal to answer a question to a committee of either House which under the existing laws a witness would be compelled to answer before any judicial tribunal in the land having cognizance of the same matter shall be a crime, and you may punish it with exactly the pains and penalties you put in this bill; and when you have done that you will have met this case.

As the honorable Senator says, there is no pretense that the answer which it is alleged the witness gave in this instance would protect him in a court. I believe that he made no such issue as that and contended for no such privilege. But the bill goes beyond this and steps over this and overrides the privileges which, I think, ought to be preserved. If gentlemen will amend the bill in that way, and simply say (and it seems to me if they want nothing but the enforcement of their own authority it is all the House ought to ask) that a refusal of a witness to answer before a committee of either House a question which he would be compelled to answer before a judicial tribunal shall be contempt, punishable, if you please, in the way this bill punishes it, then it will meet no opposition from me; but until you do that I can not vote for it. I can not be driven, no matter how others may be, by the force of circumstances to vote for a vicious principle; and, believing the bill in its present shape embodies it, I must vote against it.

Mr. BAYARD. I certainly do not think this bill is molded exactly as I would prefer; there are some provisions in it about which I have doubts; but I do not, under existing circumstances, mean to interpose any objections to its passage, though I believe it will require modification hereafter.

Nor do I think, sir, that the objections raised by the honorable Senator from New Hampshire to the passage of the bill are tenable in themselves. As far as I am able to appreciate them distinctively, they are but two; one is, that the bill is *ex post facto* in its nature, but in what respect is not pointed out to us. I admit that no witness who has been called and questioned, and refused to answer previous to the passage of a law of this kind will be liable under its provisions; but if, after the bill be passed, any witness, whether previously called or not, is called before a committee of the House of Representatives or the Senate, or before either body, and a question is put to him, and he violates the law of the land, to punish that is certainly not *ex post facto* legislation, and by the refusal to answer he would be liable to the provisions of this act. Nor do I think, Mr. President, the time has yet arrived in this country when any man is to become a hero by resisting the laws of his country. I have no fears of that.

The honorable Senator from New Hampshire is pleased to bring the press into the matter. I do not see that it has any connection with it. I can find no line, no word in the bill which has any relation to the press. It is a general power of punishment given in order that Congress may be able to inquire into matters which otherwise, under existing laws, they will not be able to reach. It is true it so happens that the necessity of the passage of such a law has arisen from communications made through the press; but because the communication was made through the press, and because it so happens that the individual who may have been examined before the committee of the House, and may have shielded himself for the want of a law compelling him to answer, is in the employment of the press, is that any reason for supposing this bill is leveled at the press? It is leveled at any man and every man who, being cognizant of any corruptions on the part of any member of Congress on any subject into which Congress pleases to inquire, shall refuse to give testimony before a committee in order that the guilty party may be brought forth and sentenced. I think the moral sense of the country will sustain a bill of that kind.

I believe there are, as I have said, things which require modification in the second section. I agree in part with the Senator from Illinois [Mr. Trumbull]. It may require modifications, but they can be made hereafter. There is nothing in that second section which the courts, when they come to pass on any charge under the bill against a party by way of indictment, can not correct if it goes too far, though it would be better, perhaps, if it had been differently worded.

The next objection of the Senator from New Hampshire, on which he seemed to lay great stress, was that the object here was to compel a man to answer to that which would degrade and disgrace himself before the House of Representatives, when he would not be compelled so to answer according to the course of the common law in our courts as justice is generally administered. I have already stated that I knew of no such rule. There has been a conflict of opinion, but the better opinion I think is as I have stated. The bill provides for punishing a witness who shall refuse to answer any question "pertinent" to the matter of inquiry under consideration before the House or its committee. If he refuses to answer an irrelevant question, he is not subject to the penalties of the bill. The question must be pertinent to the subject-matter, and that will have to be decided by the courts of justice on the indictment. That power is not given to Congress; it is given appropriately to the judiciary. If he refuses to answer a question pertinent to the inquiry under consideration, he becomes liable to the penalties of the bill; not otherwise. What is the principle of law? I will read the position as I think it is unanswerably stated by the elementary writer from whom the Senator quoted—Greenleaf on Evidence, section 454. After discussing other questions connected with exempting witnesses from answering in a court of justice, he says:

Where the answer, though it will not expose the witness to any criminal prosecution or penalty, or to any forfeiture of estate, yet has a *direct tendency to degrade his character*. On this point there has been a great diversity of opinion, and the law still remains not perfectly settled by authorities. But the conflict of opinions may be somewhat reconciled by a distinction, which has been very properly taken between cases where the testimony is relevant and material to the issue, and cases where the question is not strictly relevant, but is collateral, and is asked only under the latitude allowed in cross-examination. In the former case, there seems great absurdity in excluding the testimony of a witness, merely because it will tend to degrade himself, when others have a direct interest in that testimony, and it is essential to the establishment of their rights of property, or even of liberty or of life; or to the course of public justice. Upon such a rule, one who had been con-

victed, and punished for an offense, when called as a witness against an accomplice, would be excused from testifying to any of the transactions in which he had participated with the accused, and thus the guilty might escape; and, accordingly, the better opinion seems to be, that where the transaction, to which the witness is interrogated, forms any part of the issue to be tried, the witness will be obliged to give evidence, however strongly it may reflect on his character.

I think I have stated correctly the rule of the common law, and that is the rule of reason, founded on large experience. There may be conflicting authorities. This bill violates no right of that kind. Exemption is given, by the express language of the second section of the bill, from any liability for disclosures which a witness may make under it. It requires that when he is examined on a matter of fact, or asked to produce a necessary paper, he shall not shield himself on the ground that it may disgrace him or render him infamous. Of course that is subject to the proviso that the question shall be pertinent to the issue, in the language of the books. Is not this all reasonable and right? Can you in any other mode get at these charges of corruption which have been floating through the country for years past, which have at last gone into the press, and assumed such a specific form that it becomes absolutely incumbent, if the Congress of the United States means to retain the confidence of the people of the country, that it should thoroughly ferret out these allegations, and if there are men in either branch capable of selling the authority which their constituents have confided to them, for dishonorable and disgraceful purposes, or for purposes of pecuniary emolument to themselves, these men should be exposed and condemned. Every one knows such charges have been made not through the press alone—they are rife in the streets of Washington from hundreds of men, and it is time an inquiry should be made.

Without some law of this kind we have found all previous efforts of inquiry futile. Now the charge is brought home so as to shock the sense of Congress—brought home by a witness who deliberately tells them, “I have been offered a bribe by two members of your body, but it is against my honor to disclose the names of those men who have asked me to do an act disgraceful to myself as well as to them.” Sir, I can hardly understand the confidence implied in that. When a man comes to offer to me a proposition which is dishonorable in itself, he can hold me to no confidence whatever, unless I am foolish enough beforehand to say to him, “No matter what you tell me, I promise I will never disclose it.” I trust I should never be guilty of such ridiculous credulity as that in regard to any man. Without such a promise I cannot understand any implied confidence arising from the fact that a man makes a proposition to me which is dishonoring and degrading to me if I accept it, and even dishonoring and degrading to me that he should have dared to make it. I therefore hold, sir, that in the particular case which has given origin to this bill, and has brought it specifically before the people as well as before Congress, action becomes necessary. In order to render that action effectual, a bill of this sort, though it may contain provisions which I should wish differently molded, is primarily necessary to be passed. I shall, therefore, though I would desire to see it amended in some respects, interpose no objections to the passage of the bill. I trust it will pass the Senate as it came from the House of Representatives.

Mr. SEWARD. Mr. President, I entirely agree with the Judiciary Committee and the Senators who have spoken, as to the importance of some amendment of the laws touching the present question; but I have considered for myself whether, under the pressure of the exigency which is supposed to require the passage of some bill immediately, I

ought to vote blindly for a bill which abridges the rights and liberty of the citizen without seeking to amend it so as to save those rights and that liberty from danger. The result is at least that, whatever may be my final vote on the bill, I consider it my duty to suggest amendments which are required by the spirit of our institutions and by regard for the rights of the citizen.

In the first place, I call the attention of the Senate to the fact that this bill makes it a misdemeanor for *any person* to refuse to answer *any question* which is pertinent to *any inquiry* before a committee of Congress. It need not be a material question; it may be a frivolous question; it may be a trival question; it may be an inquisitorial question. I shall propose to amend the bill by inserting, after the words "answer any," the word "material;" so that it will read, "any person who shall refuse to answer any material question," etc.

I call the attention of the Senate to another feature of this bill. While providing that it shall constitute a misdemeanor to refuse to give testimony material or immaterial, provided it be pertinent to any inquiry before either House, the bill makes no reservation about the character or nature of the subject which may be pending before the Senate or House of Representatives, so that it may be a subject over which Congress has no jurisdiction. It may be foreign from all the provisions of the Constitution; it may be a local question; it may be a State question; it may be a personal question; it is not necessarily a public question. To be sure, I shall be answered that great legislative bodies will not institute inquiries into matters which are foreign from their jurisdiction. That may be so, generally, but it is not always true.

Mr. BAYARD. Allow me to make a suggestion to the honorable Senator. It is a rule of law very well settled, that if there is no jurisdiction over the subject-matter, the proceeding is void. In such a case, of course, a court of justice would decide that the witness could not be compelled to answer for want of jurisdiction.

Mr. SEWARD. The bill does not provide that, but is broad and general. It is, that whoever shall make willful default or refuse to answer any question pertinent to the issue under consideration before a committee of either House, shall be guilty of misdemeanor. I think State rights, as well as the rights of citizens, are involved. The honorable Senator's reply to my objection by implication concedes its force, and there can be no harm in amending the bill so as to save all doubt and danger on that subject.

When the honorable Senator from Delaware interrupted me, I was on the point of saying that as a general fact legislative bodies will not be expected to transcend their jurisdiction; but I do not think we can rely on that expectation, because we have a complex Constitution. The jurisdiction of the Federal Government is limited and special, and a large part of all the affairs of Government in this country are devolved on other legislatures than the national Congress. The history of legislative bodies shows that, constituted as they are, especially in a republican or free country, there is a tendency at times to high political excitement.

I have been a member of the Senate when I was but one in a party of three. I have been a member of the Senate for a period of four or five years, I think, when there were not Senators here agreeing with me in opinion sufficient in number to call for the yeas and nays in this House. I have been a member of the Senate when the question was agitated whether the political principles and opinions which I was supposed to entertain did not justify my expulsion from the body. I

have seen a legislature in France usurp the whole Government. Historically we know that the democratic branch of the legislature in England refused and denied to the people of the Middlesex district the choice of a member of Parliament, and voted into the vacant seat a man who received but two hundred and fifty votes, against the clear votes of a competitor who received one thousand three hundred. The realm of Great Britain was convulsed with alarm and apprehension of a dissolution of the Government by reason of that tyranny. The greatest of English statesmen laid down his life in the effort to recall the British Parliament to the preservation of the rights of its constituents in that very case—I allude, as you all know, to Lord Chatham, the last speech of whose life, and the speech which is supposed to have cost his life, was made on the subject of the exclusion of John Wilkes.

These things may not happen here, and I do not think they will happen to-day or to-morrow. I do not think they are going to affect me or anybody with whom I have associated if they shall happen. I have no fear that I shall ever be here again without sufficient numbers around me to protect and defend our common rights under the Constitution. But this bill, if it is to become a law, is to stand, for aught I know, for a hundred years, for two hundred years, for five hundred years, and if it is right I hope it will stand for a thousand years. I think that now is the time to make it right. Therefore, I propose to the Senate to insert, after the word “inquiry,” the words, “within the constitutional jurisdiction of Congress, or of either House of Congress.”

I call the attention of the Senate to another feature of the bill, which is, that it dispenses with and subverts and destroys all the privileges of witnesses allowed by the common law. I will state a case which may happen under this bill. It is an extreme case, but it is a case which is possible. The House of Representatives has the power of impeachment. It may impeach the President of the United States, or the Chief Justice of the Supreme Court, or any other executive or administrative officer. Under this law, when it shall have been passed the wife of the President of the United States, or the wife of the Chief Justice of the United States, may be summoned before a committee to give testimony to impeach and convict and degrade that magistrate. I put this case of high functionaries, not because I think Presidents or Chief Justices ought to be favored or protected, but simply for the reason that, claiming to be a Republican and a Democrat in my principles, life, and conduct, I claim for the humblest citizen of this country that protection which ought to be given by law to the highest magistrate or officer of our Government. With these views I shall offer this amendment, to come in at the close of the first section:

Provided, That this act shall not be construed so as to deprive any witness of such privileges as are allowed to witnesses by the rules of the common law.

Mr. BAYARD. I admitted before that I thought this bill might have been better molded in some respects, though not exactly in those particulars to which the honorable Senator from New York has called the attention of the Senate. In my judgment, the word “material” is utterly unnecessary, because “pertinent” includes it. Either speaking as a lawyer or according to the common understanding of the English language, the word “pertinent” covers it fully.

The next amendment proposed by the honorable Senator relates to the question of jurisdiction. I suppose the principle to be clearly and unalterably settled, that no matter what law you pass it must go to a

court of justice. This law does not propose to give to this miscellaneous political body the power of punishment; but one of its greatest recommendations is that it transfers that power of punishment to a court of justice after judicial inquiry. All that is to be done in the case of a refusal to testify is to certify the fact to the district attorney, who is to lay it before the grand jury, and if the party is indicted he is bound to answer according to the terms of the law, as any other person would for an offense against the laws of the land. I think the bill gives adequate protection against the dangers which the honorable Senator from New York has given as a reason why it should not pass.

I am aware that legislative bodies have transcended their powers—that under the influence of passion and political excitement they have very often invaded the rights of individuals, and may have invaded the rights of coordinate branches of the Government; but if our institutions are to last, there can be no greater safeguard than will result from transferring that which now stands on an indefinite power (the punishment as well as the offense resting in the breast of either House) from Congress to the courts of justice. When a case of this kind comes before a court will not the first inquiry be, have Congress jurisdiction of the subject-matter?—has the House which undertakes to inquire jurisdiction of the subject? If they have not, the whole proceedings are *coram non judice* and void, and the party can not be held liable under indictment. The court would quash the indictment if this fact appeared on its face; and if it appeared on the trial they would direct the jury to acquit. I hold, therefore, that the second amendment is entirely unnecessary; and as it would only tend, probably, to prevent the passage of the bill for some time, and would have no useful effect if adopted, I shall vote against it.

The third amendment might be more germane, though I think not, in the case cited by the honorable Senator. There is no danger, however, in my judgment, of the exercise of such a power on the part of either House as compelling a wife in any case to testify against her husband. If I supposed it was possible they could do so, I should be opposed to the passage of this bill. That is really one of those matters to which I alluded when I said I thought amendments might well be made. I do not apprehend any difficulty in the case suggested by the honorable Senator of an impeachment by the House of Representatives, and a trial before the Senate of the United States. I have no fear that the wife of the party standing impeached would be liable to be examined as a witness against him, because I think this bill would not apply to a case of impeachment at all. The case of impeachment is provided for under the Constitution, by which the Senate of the United States is turned into a court of justice, and the chief justice, who is not a member of the Senate, presides for that purpose. I hold that a bill of this kind could have no application whatever to the Senate sitting as a body to decide judicially on an impeachment by the House of Representatives, and could give no authority in such a case. We sit then as a court of justice, with the rights of a court of justice, and this bill has no relation except to the sessions of Congress in their legislative capacity, and therefore the reason given by the honorable Senator I do not think sufficient for his third amendment.

As to any danger of the exercise of the power in other cases in inquiries before either House, I do not think there is any probability of that, and if there is, it can be remedied subsequently. The call for this bill is so urgent that it would be wise to pass it at once, and to remedy any minor defects by subsequent legislation.

Mr. TOOMBS. The only objection urged by the Senator from New York that has not been fully answered by the Senator from Delaware is the last one, and there I think my friend from Delaware is in error to the whole extent of his concession. The danger apprehended is imaginary. The idea that it will happen results from a forced and wrong construction of this bill. The bill puts witnesses before a committee of Congress precisely on the same terms, and leaves them with the same exemptions that they have at common law, except in two respects. In the first place, the bill takes away the exemption afforded at common law, that a witness need not testify where the matter on which he may give testimony to will criminate himself; and, in the second place, it takes away the exemption that he may refuse to testify when the matter may render him infamous. The bill leaves every other exemption where it was before—that resulting from the relations of husband and wife, and counsel and client.

This, it seems to me, must be apparent from an inspection of the bill. The exception of particular exemptions, of course, excludes the exception of all other exemptions. If the object of the bill was that persons called upon to give testimony before a committee of Congress, should have none of the exemptions allowed to witnesses at common law, the second clause would have been wholly unnecessary. The bill only says that the common law exemption shall not protect a witness in the two specified cases. I say, then, it is a forced construction of the bill by which any other view is attached to it; and the attempt to amend it in this respect is to defeat it by a side blow. If there is a real substantial objection to the bill, it ought to be heard, and we can amend it so as to meet that. If there is no such objection, let us pass the bill at once. To say that it might be made better—to say that the measure of redress is not fully adequate—is not a good reason why the Senate now should interpose to prevent the passage of this bill which the House of Representatives have sent to us, and the passage of which is now necessary for them.

The Senator from New York has told us of the wrong things which the House of Commons have done. This body, in my judgment, has done as absurd and as wicked things, and by that Senator's vote, too. Against the law, in my judgment, they have attempted in some way to punish a citizen, and it was done by the unanimous vote of this body, except my own. I contended, in that case, that the only way you could reach the party was by passing a law under the Constitution. You have a right to pass all laws necessary and proper for the faithful exercise of the powers vested in Congress by the Constitution. Now, why should we not pass a law to get rid of the difficulties to which the Senator from New Hampshire alluded? He says that in one case where we attempted to punish for contempt the Senate made an improper show of itself, and was put to expense. We shall always have that show, and shall always be put to expense in such cases, until Congress passes a law reaching them. Sir, you can not get from me a vote of condemnation for the most miserable wretch that may hang around the purlieus of the Capitol until you have a law defining the act which he has done to be criminal. I shall not be criminal or base enough to vote to punish a man against law under any of your pretended privileges of Parliament. No matter what his act may be, I would not vote to punish him under any indefinite idea of privilege. You must have a law, and then I will put him under the operation of the law. This law will punish the people whom it is intended to reach.

If you defeat this bill you have no law on the subject; and then, of course, the worst criminals may come here, and no matter what may be their offenses against the body, those who hold my opinions can not consent to punish them under any vague notions of privilege.

I say that this bill, according to all proper rules of construction, leaves the exemption in the case of husband and wife, and every other exemption of the common law, except those which it takes away. It takes away only the two exemptions which I have attempted to show are properly taken away. For this reason I think the amendment of the Senator from New York is unnecessary.

There is another point in his amendment. He proposes a proviso that the inquiry in regard to which a man shall be called to testify shall be within the constitutional powers of Congress. Does that Senator think that this bill can give to Congress powers which the Constitution does not confer? Can it take away the constitutional powers of Congress? Is it constitutional for the Senate or House of Representatives to make a man testify before them or their committees? That is all this bill seeks to do. If either House should attempt to take up a subject over which they had no power no bill passed by Congress could give them authority, nor could it diminish any power given them by the Constitution. That amendment, therefore, is unnecessary.

That everybody intrusted with power will at times abuse it I do not doubt. The Senate and House of Representatives from the beginning, in my judgment, have done so. Whenever they have seized anybody and put him in custody, no matter what he may have done, they have committed an outrage on the rights of the citizen, unless they arrest him under a law passed in pursuance of the Constitution. To say that Congress will violate laws and violate constitutions is only saying that they are human. They are not exempt from the ordinary frailties of mankind. It is of the last importance, however, that their just constitutional rights should be defined by law. The British Parliament have always refused to define their privileges, for the reason that if they did so they might be invaded. We stand as a nation of law upon written constitutions, making our rules of action clear and open, or attempting to do so; and it becomes our duty to define the privileges of the bodies of which we are members, so that the citizen who transgresses them may know the law beforehand. Until you pass such laws you can get no vote from me to punish anyone for breach of privilege.

Mr. BUTLER. Perhaps the relation in which I stand to this bill requires that I should say a word or two. I do not approve of the bill in all its provisions; but it is a bill which ought to pass now, and if any amendments to it are necessary they can be made hereafter. I do not regard it as a perfect bill; but I have been here, and so have you, Mr. President, long enough to see such a mockery of proceedings to punish a contempt of this body as to satisfy me that I never would vote for such a proceeding again unless I had some written law by which I could control it. I recollect very well when this gentleman, who it was said published the Mexican treaty in the Herald, was brought up here, and what was the result? He was kept in the custody of the Sergeant-at-Arms, I believe, for about a week, whilst we were discussing his case, and I think we paid his expenses, and we paid the Sergeant-at-Arms \$500 for entertaining him at his house very handsomely.

Now, how do we stand? This very witness has been brought here; and he can charge Congress for his expenses in coming here, when he positively refuses to subserve the ends of the subpoena which has been served on him. I have never understood the common law principle to be as some gentlemen have here intimated. When a witness on the stand is called on to testify, it is not enough for him to say that his answer will implicate him in guilt. If he says that it will necessarily do so, and a disclosure which he may make to the judge shows it, then the judge may very well authorize him not to answer; but I have never understood the amplitude of a witness's privilege to be such that he could determine whether he should be exempt or not; and it ought not to be so.

I know nothing of this witness now in custody under the order of the other House; but it may be that he says, "I will not implicate myself in this matter," when, in fact, it would not implicate him. I do not allow the witness entirely to assume jurisdiction over this subject. My opinion always has been, and is now, that, according to the organization of every political body, the Senate and the House of Representatives have power, under the law of self-preservation, the law of self-defense, the organic law of vitality—yes, sir, the vitality of resentment, if you choose to call it so—to defend themselves against any assault, any insult put upon them. I say we have ample power now to bring up any witness, and commit him to jail if he does not answer. Suppose one stronger than yourself should take you, sir, from that chair, and carry you out, and force the Senate to elect a President *pro tempore* in your absence, because violence had been introduced into the Senate, I should say immediately send for the man; and if he were to say to us, "I put you at defiance; you have no law to indict me; I will go before the court, and I feel that I can go before a court in a part of the community where the opinion is in my favor, and claim a verdict of exemption from punishment;" will you tell me any political body could exist on terms of that kind? I say we have the power of self-protection.

This bill really restricts instead of enlarging our privileges, if Congress, acting under the derivative powers of the Constitution, as we necessarily do, is to be reduced to that. I say, on the contrary, that Congress should proceed at once to make exhibitions of people of this kind; it should be not only an exhibition for the newspapers, and for discussion upon the right of Parliament to punish, but I should wish to see the time come when—like the hardy English law, the common law—we could punish a man so that he should feel the force of your law. Until you do that you will find this class of people escaping with impunity.

This man—I do not know who he is—says that he will not answer because it will implicate him. Men are not likely to be approached unless they are approachable. How came he to be approached in preference to other people?

I will vote for the bill—not that I think it a perfect one, but it ought to be passed; and what is more, you will never have any respectability in Congress until you do, as I have done sometimes on the bench, put a man in jail and keep him there just as long as you choose.

MR. SEWARD. I proposed, Mr. President, to amend this bill before it be passed. The replies which are made to my propositions are, first, that the amendments are unnecessary, because the bill is not defective in these respects. This is what is said by a portion of the friends of the bill; and by another portion it is answered that the bill is defective,

and ought to be amended in these and in other respects, but that any attempt to amend it would endanger and defeat the bill. In regard to the hazard of defeating this bill, the case stands about in this condition: There were 12 votes against it and 182 in favor of it in the House of Representatives, and it had its three readings in one day.

Mr. TOOMBS. The Senator is out of order.

Mr. SEWARD. I beg the pardon of the House of Representatives for getting out of order by alluding to their proceedings, and thank the honorable Senator from Georgia for vindicating their privileges.

Mr. TOOMBS. Not their privileges, but ours; it is against our rule, not theirs.

Mr. SEWARD. I was led into that (the honorable Senator will excuse me for saying so) by the quite unparliamentary remark of his, that the bill was in danger of being defeated. I withdraw from the House of Representatives, and I will not say again that the House of Representatives has passed the bill by so large a majority as to indicate a fixed purpose. Now, in regard to the prospect of its passage in this House, it had two readings in one day, and I think but one honorable Senator [Mr. Hale] has intimated that, unless the bill was amended, he would not vote for it. I think he probably stands alone. No Senator has spoken against the necessity of passing some bill. No person (except the honorable Senator from New Hampshire—and I do not distinctly know whether he has or not) has declared a fixed opposition even to this one. I certainly shall vote for this bill in its present imperfect shape if I can not amend it, and I think that probably there will not be any vote against the bill, whatever shape it may take in this House. That is the judgment I have formed from the temper which I see manifested all around me. Therefore there is no necessity for refusing amendments for the purpose of saving the passage of the bill. It is sure to pass, whether it is right or whether it is wrong in the respects which I have suggested.

Why, then, do I propose to amend it? Simply for the reason that I have always held it to be a good maxim that whatever was worth doing at all was worth doing well. Whatever one attempts to do ought to be attempted to be done rightly. Whatever laws Congress attempts to pass must have not only a present, but a future bearing—a wide one. It is a judicious rule, in regard to legislation, that all laws shall be thoroughly considered and made as perfect as possible before they are passed, and not be left for amendment after they have been passed.

I will speak now, very briefly, to the three amendments which I have proposed. The honorable Senator from Delaware thinks the word "pertinent" in this bill is equivalent to the word "material." I have sent for the law books to the law library, and I have them before me, but I have not had time to examine them; but I think I can say that an indictment for perjury can not be sustained if it contains the word "pertinent" alone, without the word "material," in regard to the question upon which testimony is given. If so, this is not hypercriticism, but it is a legal objection which I take to the bill; and the proposition I make is to amend it in a material respect.

I am told by the honorable Senator from Georgia that the proper construction of the bill, without any amendment, saves to the person accused the right of testing the constitutionality of the proceeding before Congress, and also that it saves all advantages to the witnesses except the one which is taken away in the second section. Whether

this be so or not can be seen by reading the first section of the bill itself. It is very short, and does not contain more than sixty words:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person”—

Are there any privileges reserved to that person? Does it exempt the wife? Does it exempt the priest? The terms are universal, broad, and comprehensive—

“any person summoned as a witness by the authority of either House of Congress to give testimony, or to produce papers upon any matter”—

Does the bill require it to be a constitutional matter? No—

“any matter before either House or any committee of either House of Congress, who shall willfully make default, or who appearing shall refuse to answer”—

Any privileged question? No; but—

“any question pertinent to the matter of inquiry before the House or committee by which he shall be examined, shall,” etc.

Sir, if the English language affords the terms which can be so arranged as to subvert and destroy every privilege the common law allows to a person summoned as a witness by a committee of Congress, the language of this section does it, and there is no saving clause in that section, or in the bill. Upon this simple exposition of the demerits of the section I rest my claim to the amendment.

Mr. TOUCEY. I did not intend to say one word in defense of this bill; I thought the exigency of the case was such that it would pass in this body without opposition—indeed, without debate. In that I am disappointed. I do not doubt the power of either House of Congress to protect itself, without the consent of the other House, to any bill of this kind. It is indispensably necessary, as a law of self-preservation, that each House of Congress, without the aid of the other, should have in itself, and of itself, by virtue of the Constitution, full power to protect itself, not only against violence, but against a class of assaults infinitely worse than personal violence. At the same time, I am entirely in favor of referring these questions to the courts of justice, for the reason that we have other and more important business here than trying an offender; and the fittest disposition of one is to refer him to the courts of justice under an existing law, while the two Houses may be attending to their legislative duties.

Now, in regard to this bill, the honorable Senator from New York deems it imperfect in not having in the first clause the word “material;” but there are in the bill the words “pertinent to the matter of inquiry in consideration before the House or committee.” If any question be immaterial it is not pertinent to the inquiry. If it be pertinent to the inquiry it is material; and whatever terms may be required in any indictment, there is no rule which requires that those terms should be embraced in a law. The words used in the bill are perfectly synonymous with those which the Senator proposes to insert.

The objection which he makes that the bill does not provide for the protection of the marriage relation does not lie. It is not the privilege of the party to that relation to take the objection. If the party proposes to testify, the court will not allow him or her to testify to criminate either the husband or the wife. It is on the ground of public policy; and so with regard to counsel and client. If a counselor, overlooking every obligation upon him, should volunteer to testify in a court of justice, whereby the client is involved who has committed his secrets to him in consultation, a court of justice will not permit him to testify.

It is not the privilege of the witness; it is the privilege of the client. There is, therefore, no necessity for an exception of either of those relations by this bill, because the bill says, "shall willfully make default." I hold that a party in either of those relations could not willfully make default; but it would be the duty of the House or committee to interpose the objection, and stop the witness, if he or she were a swift witness, and about to testify, a husband against the wife, or a wife against the husband, or counsel against the client.

I concur in the view presented by the honorable Senator from Georgia, that the second clause in the bill embraces every exception that can be necessary in the present case. But it is said that that clause is too broad, that it may extend to cases of crime committed beyond the jurisdiction of this Government. If a case of that kind should arise, which I can hardly conceive possible, it will be an exception out of this bill.

The honorable Senator from Illinois [Mr. Trumbull] has supposed a case of a murder committed in one of the States. How can it be pertinent to any inquiry by Congress, or by either House, or by a committee? It is no part of the duty of Congress to inquire into offenses against the penal codes of the different States. It would be a violent presumption to suppose that any such case should arise. If it should there is no difficulty in meeting it under the operation of this bill. If there has been bribery here, of any member of Congress within this District, it is an offense cognizable by this Government. The party may be brought before a court of justice and may be punished. If a party to any bribery is himself involved, and is called upon as a witness, the party is amply secured by this bill, which provides that, if he discloses anything that implicates himself, he shall not be held responsible in a court of justice; or if he produce a paper against himself it shall not be used against him. The shield which this bill interposes between the witness and any criminal prosecution protects him perfectly, except only in regard to the disgrace.

It is well said by the learned commentator who has been read, that that is a question upon which there has been great diversity of opinion. I think the tendency of opinion is very strongly to hold that it is no objection, where the question is pertinent, where it is involved in the issue to be tried, that the offender may disgrace himself if he becomes a witness, because the party whose interests are at stake has a right to his testimony, and may call for it. It is not a sufficient answer for him to say, "I shall disgrace myself if I do answer." I think that will become the ultimate law of all courts of justice. Certainly it ought to be, for I am at a loss to consider any principle upon public policy by which a man's infamy should be the means of depriving another of the benefit of his testimony.

It has been objected that this bill makes it the duty of the Speaker of the House of Representatives to inform the district attorney, and imposes on the district attorney the duty to lay the case before the grand jury of the District. That is doubtless a superaddition to what would otherwise be the duty of the informing officers. The moment this is made a misdemeanor by the law there is no difficulty in immediately commencing a prosecution before the inferior officers, and holding the offender to bail, or imprisoning him to appear until a prosecution can be brought in a higher court. That remedy is not taken away, but it exists. This bill expressly declares that the penalty which it provides is superadded to any penalty that already exists.

It has been said that this bill is *ex post facto*. It would be if it applied to a past offense; but there can not be a more groundless objection than that. There is not a word in the bill that purports to have any retrospective provision; it is altogether prospective.

I have said thus much because I have been connected with the committee that reported this bill. I deem it of much higher importance that the bill should pass promptly than that it should be amended in any particular which has been suggested. I hope we shall pass it before we adjourn.

Mr. PUGH. Mr. President, I had the misfortune to dissent from the conclusion of my colleagues on the Committee on the Judiciary in relation to two or three of the provisions of this bill. It is not my purpose to prolong the debate, but I have prepared a very brief statement of the reasons why I could not support the second section of the bill; and I simply ask that it may be received as a statement of my views as a minority of the committee, and placed on record.

Several SENATORS. Read it.

Mr. PUGH. It is as follows:

The undersigned, a member of the Committee on the Judiciary, dissents from the recommendation of his colleagues in favor of House bill entitled "An act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony," reported the 22d instant.

The second section of the bill contains three propositions, together with a proviso. The propositions are:

1. "That no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture, for any fact, or act touching which he shall be required to testify before either House of Congress, or any committee of either House, as to which he shall have testified, whether before or after the date of this act;

2. "And that no statement made or paper produced by any witness before either House, or before any committee of either House, shall be competent testimony in any criminal proceeding against such witness in any court of justice;

3. "And no witness shall hereafter be allowed to refuse to testify to any fact, or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of such paper may tend to disgrace him, or otherwise render him infamous."

These are all in alteration of the rules of evidence, according to the common law, as administered in our courts of justice.

The last proposition is to deprive a witness of his undoubted privilege to decline to answer any question when the answer itself would prove him to be infamous. The undersigned can not agree that any tribunal should be empowered thus to torture a witness and compel him to the alternative of perjury or exclusion from the regard of his fellow-men. Our judicial courts have never found this requisite to the ascertainment of truth or the administration of justice. It can be requisite only to the gratification of a wanton curiosity, or of a desire to oppress and ruin the witness. In the case of a Congressional committee, especially, is such a power to be denied, because the committee is not confined, as courts are, to a specific issue, but may exercise an unlimited freedom of investigation.

The first two propositions are objectionable also. At common law no witness can be compelled to answer any question when the answer would subject him to punishment or afford evidence against him in a criminal prosecution. These propositions design to take away that privilege and to substitute (first) an immunity from punishment to the witness for all transactions thus disclosed, and (second) an exclusion of his own statement as evidence in any criminal prosecution. The undersigned objects for two reasons:

1. Congress can make no law to shield a witness from prosecution in the courts of the several States, nor prescribe any rule of evidence for those courts. It can not give the witness, therefore, any equivalent for the common law privilege of which this act seeks to deprive him.

2. The provision will operate, in practice, as an advantage to those who are most guilty and least scrupulous, enabling them to escape the just consequences of their own crime by a betrayal of their less culpable associates. It is the system, too frequently practiced, of granting pardon to that one of two or more prisoners who will testify for the prosecution—a system the mischiefs of which are so enormous as to have induced a general opinion that the greatest knave is the first to become the State's evidence.

The undersigned is thoroughly convinced, as the result of all his professional observation, that the testimony of accomplices, spies, detectives, and the like, to secure which, alone, this section of the bill can be required, amounts to mere falsehood nine times in ten.

The undersigned is anxious to confer on the committees of Congress, and especially a committee like that which it is understood the House of Representatives has now appointed, all such powers as are necessary to proper and rightful investigation; but he can not consent to arm any committee with the powers of a court of high commission, or a court of the star chamber, and far less (as here proposed) with powers which exceed those claimed by the most arbitrary of English tribunals.

If the second section were omitted, and a verbal amendment made to each of the other sections, the undersigned would give the bill his cordial indorsement.

Respectfully submitted.

G. E. PUGH.

The PRESIDENT *pro tempore*. The question is on the amendment in line 7, after the word "any" to insert the word "material."

Mr. HALE. I ask for the yeas and nays on this amendment; and I wish to say a single word. As this matter has come up so suddenly, I desire here to express my thanks to the honorable Senator from Ohio for the very satisfactory manner in which he has vindicated the great principle which I think this bill seeks to override. I hardly know how to express to him the great obligations under which I feel as a single individual to him for the very clear and lucid manner in which he has set it forth; and I hope that, coming from that source, this appeal will reach some hearts that I could not reach. I look on this bill as one of the greatest invasions of popular right ever attempted by this Government. I look upon it as entering upon a war with an individual where defeat is certain and disgrace highly probable. I tell you, sir, that we are treading on sacred ground. We had better shake off the shoe of prejudice and passion from our feet. Remember that when we undertake to trench on these sacred constitutional privileges of the citizen, we are—more than Moses before the burning bush—standing on holy ground; and I thank the Senator from my heart for the able,

manly, and constitutional vindication of this great right that he has just made to the Senate, and which, whatever may be his fame as a lawyer, will add enduring laurels to it as long as constitutional liberty has a friend left in this country.

Sir, this is no idle declamation. It is no little attempt to crush a puny individual. I tell you, sir, that individual is strong with the shield of the Constitution, and you can not reach him without piercing that and trampling down every protection which the wisdom of our forefathers has erected for the preservation of the rights of the citizen. With these remarks I am content with asking for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. BUTLER. Mr. President, the tone and current of remark here have induced me to speak rather than anything in this bill. I have been a member of the Senate for about eleven years, and it is not an uneventful chapter in the history of this country or of my own life. In those eleven years I have ascertained that corruption and irresponsibility have found their way into the Congress of the United States, which would have been rebuked by the hardy morality and the honesty of our ancestors. Sir, such a law as this was not necessary when this Government went into existence. It is only necessary when stock-jobbers, speculators, and pliant influences are brought to bear on the Government of the Confederacy. I am not one of those who are afraid to trust to the altar, as it was said of Vesta—when the fires of Vesta were lighted up it was said that none but pure hands could touch them; they would burn the impure. Now, who is afraid of any law like this? The gentleman from New Hampshire says that he thanks the Senator from Ohio for coming forth to defend the criminal! I say, independently of this law we have a plentitude of jurisdiction over this subject, and we are rather restricting than enlarging our power by this bill.

At one time—I allude to no recent transaction with any other view than as an illustration—a friend of mine would have been made the victim of dogs to appease the demands of popular fury, as far as it could exhibit itself. Now, when we ask nothing in the world but a fair investigation of a subject which may expose a criminal, all the barriers of the common law are to be thrown about him. Why, sir, I am not unwilling to trust the discretion of the Senate at any time. I would be willing, with even the aversion which is entertained towards my own State in some quarters, to trust the gentleman from Vermont, who sits near me [Mr. Collamer], if he was administering the law, though in his part of the United States I should have as little opportunity to stand up and defy the current of public opinion as any other man; but, when law and individual justice are concerned, I would trust the Northern people. I am willing to trust this body in its discretion on such subjects as this; and that is the true law for them. Discretion is said to be the law of the tyrant; but the law of the tyrant, regulated as it is, not by one man, but by many, is a tribunal to which I am willing to appeal on a question of this kind. When we come to ask simply to pass a bill requiring a man to tell the truth, then it is that Magna Charta and all the great principles of the common law are invoked. Well, sir, I have heard all these appeals to liberty. I sit down with the declaration—oh! government, government, give me some of it!

Mr. BAYARD. I rise, not for the purpose of going further into the merits of the question, but to repel both an assumption and an intimation on the part of the honorable Senator from New Hampshire on the whole Senate. By what authority does the honorable Senator tell us

that this is making war on an individual? Is there anything in the bill that justifies it? Is it not a bill which applies to all individuals who, being cognizant of facts which ought to be inquired into in order to keep pure the two Houses of Congress, refuse to disclose them before the proper tribunal?

The honorable Senator seems to suppose, and not only seems to suppose, but tells to the country, if not to the Senate, that we are making war upon an individual. Sir, I do not even think of the man in reference to this bill. I think the bill limits the powers that have been hitherto exercised by Congress and defines them rather than extends them. I think, also, that it has this further advantage: that in cases where parties fall within the law the punishment will follow with some certainty. That never has been the case under the indefinite powers of Congress as to punishing a witness for refusing to answer. That is the great advantage of the bill. That is why the bill will be efficient in itself. But there is no ground whatever on which the honorable Senator has a right to impute to either body of Congress that they are passing this bill with a view to make war upon and crush an individual. At least there is no evidence here or elsewhere, that I have seen, of that sort. A specific case has come before Congress of a refusal to answer on an allegation, by which the honorable Senator himself admits the witness is not protected according to law from answering. It is in consequence of a case of that kind coming before them, in order to reach any evidence of corruption that may exist as to any member of either branch of Congress, that this bill is necessary. Who would impute to Congress, in passing a bill of that kind which is meant to purify both bodies and maintain for them the confidence of the country, a desire to make war on an individual? Sir, the individual is of no importance. It is perfectly immaterial whether he is punished, or called again, or not; but the power is necessary to be given; and from the allegations which have been specifically made, it is necessary to the character of both bodies that the country should be fully satisfied. If there are such members on either floor, they should no longer hold their seats to the disgrace of the country and the injury of their constituents.

Mr. SEWARD. If there be no objection, the question can be taken on all the three amendments which I have proposed at once.

The PRESIDENT *pro tempore*. The Chair will say to the Senator from New York that the amendments are different in their nature. The first amendment is to insert the word "material." The question is on that amendment.

The question being taken by yeas and nays, resulted—yeas 8, nays 39; as follows:

YEAS—Messrs. Bell of New Hampshire, Collamer, Durkee, Fessenden, Hale, Pugh, Seward, and Wilson—8.

NAYS—Messrs. Adams, Allen, Bayard, Bell of Tennessee, Benjamin, Biggs, Bigler, Brown, Butler, Clay, Crittenden, Dodge, Evans, Fish, Fitzpatrick, Foot, Foster, Geyer, Green, Houston, Hunter, James, Jones of Iowa, Mallory, Mason, Pearce, Pratt, Reid, Rusk, Sebastian, Slidell, Stuart, Thomson of New Jersey, Toombs, Toucey, Trumbull, Wade, Weller, and Wright—39.

So the amendment was rejected.

The PRESIDENT *pro tempore*. The question now is on the second amendment of the Senator from New York—after the word "inquiry" to insert, "within the constitutional jurisdiction of Congress or of either House of Congress."

Mr. Seward called for the yeas and nays on the amendment, and

they were ordered; and being taken, resulted—yeas 8, nays 39; as follows:

YEAS—Messrs. Bell of New Hampshire, Collamer, Durkee, Fessenden, Hale, Pugh, Seward, and Wilson—8.

NAYS—Messrs. Adams, Allen, Bayard, Bell of Tennessee, Benjamin, Biggs, Bigler, Brown, Butler, Clay, Crittenden, Dodge, Evans, Fish, Fitzpatrick, Foot, Foster, Geyer, Green, Houston, Hunter, James, Jones of Iowa, Mallory, Mason, Pearce, Pratt, Reid, Rusk, Sebastian, Slidell, Stuart, Thomson of New Jersey, Toombs, Toucey, Trumbull, Wade, Weller, and Wright—39.

So the amendment was rejected.

The PRESIDENT *pro tempore*. The third amendment of the Senator from New York is to add to the end of the first section this proviso:

Provided, That this act shall not be construed so as to deprive any witness of such privileges as are allowed to witnesses testifying before a judicial tribunal by the common law.

Mr. Seward called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 10, nays 35; as follows:

YEAS—Messrs. Collamer, Durkee, Fessenden, Foot, Hale, Pugh, Seward, Trumbull, Wade, and Wilson—10.

NAYS—Messrs. Adams, Allen, Bell of New Hampshire, Bell of Tennessee, Benjamin, Biggs, Bigler, Butler, Clay, Crittenden, Dodge, Evans, Fish, Fitzpatrick, Foster, Geyer, Green, Houston, Hunter, James, Jones of Iowa, Mallory, Mason, Pearce, Pratt, Reid, Rusk, Sebastian, Slidell, Stuart, Thomson of New Jersey, Toombs, Toucey, Weller, and Wright—35.

So the amendment was rejected.

Mr. WILSON. I am ready, Mr. President, as I suppose every Senator on this floor is, to vote for a proper bill. I see no necessity existing in either House of Congress for hurrying through an immature and imperfect measure. The chairman of the committee which reported this bill to the Senate admits it to be imperfect; the Senator from Delaware, a member of that committee, makes the same admission in the face of the Senate. While they make these admissions, while they admit that the bill is not what it should be, they tell us that there is a pressing necessity for hurrying through a measure which Senators admit to be imperfect and immature. It appears to me that Congress is acting at this time under great excitement—under a sort of panic. The press of the country, during the past few weeks, and especially the press of the city of New York—a press that has a vast influence in the country, and has associated with it a great deal of learning, of practical intelligence, of ability, and of personal character—have held up before the country and the world the Congress of the United States as a corrupt, disgraced, and degraded body. These imputations have gone abroad over the land—over the universe. They have done something to bring discredit upon our country. Members feel that they owe it to themselves, to the bodies of which they are members, and to the country to meet these accusations of the public press by a prompt and thorough investigation. Every honorable man in America, in or out of Congress, is anxious that the investigation which has been ordered by the House of Representatives shall disclose corruption, if corruption exists.

The House of Representatives having directed an investigation, has been baffled by a witness, who was the original, if not the responsible, accuser of that body. The conduct of that witness, I am free to admit, is not defensible. He has assumed a position which I think wholly indefensible. But his conduct should not drive the Congress of the United States into the adoption of measures that may put in peril the rights of American citizens. I shall not be driven by the action

of this witness into the support of a measure I can not approve when this excitement shall pass away.

We are asked now to vote for this bill as it came to us from the House, where it was passed under the pressure of intense excitement. I am willing to vote for a bill which shall empower a committee of either House of Congress, or either House, to protect its honor, to investigate the action of its members, and to preserve its dignity, but it seems to me that we are going quite too far in this bill. I concur, fully and entirely, with the sentiments embodied in the minority report of the Senator from Ohio [Mr. Pugh]. I think the views expressed in that report will stand the test of time—of a rigid examination. I believe these views will receive the approval of the general judgment of the country. I am ready to stand with the Senator from Ohio upon the doctrine he has embodied in his report. I believe we had better place ourselves right now—pass a law which we can defend when the excitement of the present hour shall have passed away, and when we shall have gone to our homes—a law that can stand through all coming time, by which either House of Congress can vindicate its own rights, and purify its body, if it needs purification.

I shall vote for this bill if the second section be stricken out. The Senator from New York tells us that the bill will probably pass, and that all of us will vote for it whether it be amended or not. I can not allow that Senator to speak for me on a question of this character. I choose to take my own course—to follow the convictions of my own conscience and judgment. I can stand alone; I am ready to stand where my own judgment tells me I ought to stand, uninfluenced by fear of misrepresentation. I have no personal anxieties whether this bill shall be passed or shall be defeated. I have no personal or political anxieties as to any disclosures which the investigation now going on shall make. If corruption exists, let the corruption be brought to light. If there are corrupt members, let them be exposed. I think the time has come when Congress owes it to itself, to the country, to the men whose hands are unstained to use all legitimate and legal means to bring to light and to punish corrupt practices if they exist. The press of the country for years have hurled against both Houses of Congress imputations dishonorable to members. We have all heard of the Galphin swindle, the Gardiner fraud, Texas scrip, and California war debt speculations, land-jobbing, associations with paper mills, and other gigantic schemes, by which public men have “put money in their purse.” Yes, sir, the public ear has been filled by rumors of the corruption of members of Congress by these schemes and by the potent influences of executive power. These rumors, whether true or false, have not only filled the public press, but they have been on the lips of members of Congress in the Capitol and out of the Capitol. I wish legal and proper means could be taken to bring the secrets of the present and the past to light—to reveal to the gaze of the nation the corrupt acts of the past ten years.

But, sir, I can not vote for the second section of this bill. I do not see why a witness should stand before a committee of either House of Congress in a different position from that in which he stands in the courts of justice of the United States. Let the witness stand before your Congressional committees in the same attitude, with all the rights and all the responsibilities which belong to him when he stands before the judicial tribunals of the United States. Yes, sir, let the witness summoned before Congress have all the rights of an American citizen in the judicial tribunals of his country, and let him be placed under

all the responsibilities which rest upon him in the courts of his country.

Sir, it seems to me this second section furnishes, by a general law, impunity for all crimes of accusers of, and informers against, members of Congress. It bribes criminals by exonerating them if they accuse others. Accomplices are reluctantly admitted in courts in special cases. A distinguished writer on criminal law says:

The law confesses its weakness by calling in the assistance of those by whom it has been broken. It offers a premium to treachery, and destroys the last virtue which clings to the degraded transgressor.

In this section accusers and informers, who confess their own criminality and infamy, are offered a pardon if they will only accuse others, and that, too, under circumstances where the accusation is fatal to the reputation of the accused. Strike out this second section which contains these objectionable provisions. The first section provides for the full and adequate punishment of the offender against the rights and privileges of Congress. The third section points out the mode by which the trial of the offender may be had. These two sections are all that Congress requires to vindicate the rights of its members or the integrity of its character. With these views, I move to strike out the second section of the bill; and upon that motion I ask the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 5, nays 40; as follows:

YEAS—Messrs. Fessenden, Hale, Pugh, Trumbull, and Wilson—5.

NAYS—Messrs. Adams, Allen, Bayard, Bell of New Hampshire, Bell of Tennessee, Benjamin, Biggs, Bigler, Brown, Butler, Clay, Crittenden, Dodge, Durkee, Evans, Fish, Fitzpatrick, Foot, Foster, Geyer, Green, Hunter, James, Jones of Iowa, Mallory, Mason, Pearce, Pratt, Reid, Rusk, Sebastian, Seward, Slidell, Stuart, Thomson of New Jersey, Toombs, Toucey, Wada, Weller, and Wright—40.

So the amendment was not agreed to.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and on the question "Shall the bill pass?"

Mr. Seward called for the yeas and nays; and they were ordered.

Mr. PUGH. I desire to say a few words in explanation of the vote I shall give. If I had so low an estimate of my own character as to imagine that any constituent would attribute my vote in opposition to this bill to any fear of any investigation which can be indulged here or elsewhere, I should certainly think the character itself was not worth defending.

I shall vote against this bill because I consider it a flagrant violation of the rights of American citizens. I say that with due respect to others. I have stated the reasons for my opinion. I stand by those reasons, and I will stand by them in all places and in all times. I desire to see the Congress of the United States, the other House and this House, thoroughly purged of all unworthy members, of all corrupt combinations. I feel the perfect conviction that no investigation in which either House may indulge will result anywise disastrously to me, or to those with whom I am associated. But, sir, I will not, for the sake of ever so great a public benefit, invade the rights of American citizens—ay, sir, and the rights of British subjects, for they were the rights of British subjects established by our fathers, who founded the common law, and which have been found essential to public liberty in this country and in the country from which we derive our government, our language, and our law.

This bill violates the domestic relations. This bill, by its own terms, compels the wife, at the mere instigation of a Congressional committee, to violate the settled rule of the common law, that she shall not disclose matters communicated to her in the secrecy of the marital relation. There is nothing in it to stop the hand of a Congressional committee. This bill violates the professional confidence of the attorney. There is nothing in it to stop the hand of a Congressional committee. "Pertinent to the issue," says the bill. Who decides the question of pertinency? The committee. It is said that the court before which the indictment is pending will decide what is pertinent and what is not. I beg gentlemen to remember that the decision of the committee is final—that it cannot be reviewed by any collateral proceeding in court, or out of it. It is at the mercy of five gentlemen, who, in pursuance of what they consider a public object, may force a witness either to undergo the penalties of fine and imprisonment, or to violate every rule of evidence that has ever been upheld in the courts of civilized countries.

I did hope that the Senate would have adopted some one of the amendments which have been proposed. An amendment was offered first to insert into this bill that indispensable word in indictments for perjury, to wit, "material to the issue." That has been rejected. A proposition that the inquiry of the committee should, at all events, be limited to the constitutional powers of Congress has been rejected. A provision that the witness, as he stands before your committee, shall have the rights of a witness at common law has been rejected. And, lastly, a proposition to strike out the section which violates the law as it has been settled and handed down to us for more than two hundred years has been rejected.

Sir, if I cannot purge Congress of corruption without violating the essential rights of an American citizen, let corruption reign, let the people rise and come here in their majesty, as Oliver Cromwell did, and drive us out and put better men in our places. I think, with other Senators, we have acted under the impulse of excitement. A case has arisen in which it is desirable for us to overcome an obstacle and desirable for the country to overcome it. But, sir, as long as that obstacle stands in the impersonation of an American citizen claiming his right at common law, he shall have my voice and my vote, if he has not the voice and vote of another living man.

Sir, I have suffered in this way myself. Even in my own brief experience I have seen the bitter day when I have been called upon by newspapers to violate professional confidence for the sake of delivering myself from a personal imputation. Having withstood the temptation in that case—having lived through it, and having felt to myself the assurance that I did my duty in those circumstances—I shall feel no hesitation in voting against any bill which proposes to put any witness to the rack or the torture in the middle of the nineteenth century.

Mr. SEWARD. Mr. President, every amendment which I have proposed to this bill will be found, when this day's proceedings shall come to be reviewed, as I am sure they will be in future times, to have been calculated to favor the object of the bill by improving it, and making it more perfect; to remove defects, and to make the bill more efficient. I rise now for the purpose of stating the reasons by which I have come to the conclusion to support, in the first place, the second section of the bill, and then support the whole bill.

I have tried to save to the citizen the rights of witnesses secured by the common law. I am overruled, borne down; those rights are

destroyed, and the citizen is left without protection; and not merely the citizen, but the magistrate, the Senator, the member of the House of Representatives, everybody, any persons, and all persons whom a committee of either House shall seek, at any time, under any circumstances, for any purpose, material or immaterial, with any object, good or bad, to bring under an inquisitorial examination. I have failed. The second section of the bill provides that such person shall have the benefit of being exempt from prosecution as to the matter concerning which he is called to testify. That, it seems to me, is but carrying out a well settled policy of law, that when a person is compelled to testify against himself he shall have the favor of executive clemency. That is the reason why I shall vote for the second section.

But now, upon the whole bill, I am brought practically to this question, namely: Whether, when it is alleged that corruption is abroad in the Halls of Congress, through the deficiency of the existing remedy, I will adopt no other remedy, or whether I will adopt a new law which is objectionable to myself, some new law having become manifestly and obviously necessary? I am in favor of a new law, as every Senator is, and every member of the House of Representatives, I suppose, is. I would have it a perfect law. I have endeavored to make this perfect; and having failed, I am to decide now whether I will have no law at all, or whether I will have this one in regard to the defects of which my judgment has been overruled practically by a constitutional majority of the two Houses, certainly by such a majority of this House. Having made a record which I think will serve to vindicate my objections to this bill in the first place, and in the next place will, I think, vindicate me from responsibility for those consequences, many of which were so well depicted by the honorable Senator from Ohio, and which I expect to see flow from it unless the law shall be changed, I have no hesitation whatever in giving my vote for the bill, and taking so much of the responsibility of this measure as belongs to me, and leaving to all other members of the Senate whatever responsibility must rest on them.

Mr. HALE. I did not think, sir, that I should have been under the necessity of saying another word to the Senate; but the remarkable speech which has just been made compels me to trespass again on the patience of the Senate. I have heard many speeches made for which I thought there was no great necessity; but I think there was an eminent necessity for this one. If the honorable Senator from New York entertains the opinions of this bill which he first expressed, and which he says he still entertains—and if he thinks the consequences that have been so eloquently depicted by the Senator from Ohio will flow from its passage—I believe an explanation was necessary to account for his vote in favor of it. I do not want to stand up here, and plead not guilty to any charges that are brought against Congress in general or in particular.

I did not exactly understand the emphasis with which the honorable Senator from South Carolina spoke, nor whether he meant to give out his instructions as it is said the Scripture is given, without any private interpretation. Nor do I wish to compare virtue with anybody here for myself or my friends; but I utterly deny for myself or my friends, or anybody who votes with me, if there is anyone who does so—any such view as has been insinuated. I shall vote against this bill. The honorable Senator from Ohio has expressed how he will vote against it. If his vote represents the positive degree of expression I should like to vote in the comparative or superlative degree. I condemn the bill *in toto*; and when I condemn it, I desire to put in my protest, not only

against the charge, expressed or implied, that gentlemen who do not vote for it are willing to let corruption reign, but I desire also to let gentlemen who make these charges know that I am not afraid to meet them. They may say, if they please, that those who do not vote for this bill are afraid of investigation.

Mr. BUTLER. I never said that.

Mr. HALE. I know the honorable Senator did not.

Mr. BUTLER. I said nothing of that kind in reference to the honorable Senator from New Hampshire.

Mr. HALE. I am glad the honorable Senator has disclaimed it, but such insinuations have been made—I speak not of the honorable Senator from South Carolina—but I say such insinuations have been made, and have gone out in the public press. If I vote against this bill for no other purpose, I desire to stand here to-day to tell all such men, wherever they belong, whether to Congress or to the press, or anywhere else, that I will vote on this measure according to my judgment. I am against catching rascals unless you do it constitutionally. I am against punishing rogues unless you do it legally. I remember an old maxim, that “it is better ten rogues should escape than one innocent man suffer.”

Several Senators. Ninety-nine.

Mr. HALE. Ten is exactly as good for the argument, and it is no better if you make it an indefinite number. I believe the wisdom of our fathers—and when I speak of the wisdom of our fathers I refer to that learned body of judges, one of whom [Mr. Evans] sits directly before me—in that long code of judicial decisions by which the common law has been enforced and illustrated—has given us the best means of catching rogues, and at the same time sparing innocent men.

It seems to me that the arguments in favor of this bill are very much like those that were brought to sustain a bill which, by some strange idea of language, was called a bill to reform the Navy. Then I had the honorable Senator from Georgia with me. Those who favored that bill said, “It is true, we have done a pretty sweeping thing; we have turned 200 men out of the Navy without a trial and against right; but we have no doubt that a majority of them were rogues; and although there are 50 or 60 good officers among them, we will cure the difficulty by and by by a supplemental act.” That was the argument then, and I am sorry to say that, or something else, prevailed with a majority of the Senate. But it did not with me, and it did not with the honorable Senator from Georgia then. I could have hoped—I would hope now, if it were legal to hope against hope—that the same love of constitutional liberty which induced him to throw himself into the breach when those officers of the Navy were trampled down against law and right, would induce him now to put himself in the breach when, not epauletted officers, but “minions of the press,” are to be attacked. I could wish that that same jealous regard for the constitutional rights and liberty of the citizen might find its appropriate place in opposing this measure that it did in opposing that.

But, sir, I know it is useless to talk on this question. The passage of the bill is a settled fact. It is passed, all but a few formalities. I do not hope to avert what I believe to be a great wrong, but I wish to express my convictions that I stand where I did at the beginning—only a little more so. [Laughter.] I cannot vote for the bill, and I am glad that the yeas and nays have been ordered, that I may record my vote against it.

Mr. BAYARD. The imputation of personal motive to any member of this body is ungraceful under all circumstances, and probably never justifiable unless it be in answer to direct personal attacks. I was surprised, I confess, to hear the impassioned disclaimer of the honorable Senator from Ohio. No one could presume that any personal motive could actuate him in reference to this bill.

Mr. PUGH. I did not refer to anything said here, but, as the Senator from New Hampshire did, to what had been said in the newspapers.

Mr. BAYARD. Nobody in my judgment could by possibility impute to the honorable Senator from Ohio any personal motive in regard to his vote on this measure. We can certainly differ in opinion as to whether a measure of this kind violates the constitutional rights of individuals without imputing motives to each other. When the honorable Senator disclaimed for himself, in that language, any personal motive whatever, I think he might have been a little more chary in imputing to his brothers in the Senate that they are acting under the influence of passion; and yet that was his declaration. Where is the passion in the case? What motive have we for passion, unless it is a passionate desire to see guilty members, if they exist in either branch of Congress, brought to the punishment they so justly deserve for violating their duties to their constituents and to their own consciences? There is no passion in that, in the proper sense of the term. The evils of which we have heard as existing by rumor for several years have now assumed distinctive authority, and the desire is to ascertain if they exist. Without some legislation the power which has existed in Congress to call witnesses before them, and deliver them to the custody of the Sergeant-at-Arms, is a mere *brutum fulmen*. This bill does nothing by way of extending the powers of either House; but it transfers to the judiciary of the country the appropriate tribunal which is untouched by political passions, the control of the witness, and gives them cognizance of the facts necessary to establish the guilt of a witness who refuses to answer.

All these questions are open, and open properly before the court; yet the honorable Senator from Ohio, so strong are his prejudices against this bill, tells you the decision of the House of Representatives as to the pertinency of the questions is final. On what principle of law can that statement be vindicated? If the language of the bill had been for the punishment of a witness called before the House of Representatives, who refused to answer any question put to him, then you might say so; but the bill speaks of a refusal to answer a question material to the inquiry. Does that make the decision of the House on the question of pertinency final? The House has no authority to punish under the act. The law prescribes that, in case of such refusal, the House shall certify the fact to the district attorney, and he shall bring the matter before the grand jury. When that comes up by indictment before the court, must not the court decide whether the question put was pertinent to the inquiry? Of course they must; and they cannot hold the party guilty without doing it.

Mr. President, not only is there no violation whatever of any constitutional right here, but there is no attempt to place the citizen in jeopardy in anyway whatever. There is no attempt to abandon any of those guards which the great principles of the common law throw around individual liberty as against legislative or executive oppression that I can see in the bill. It seems to me, when gentlemen charge us with passing a bill of this kind, and express their confident opinions about it, they might hesitate a little when there stands in the Senate a majority of nearly 10 to 1, as I believe, in opposition to their views.

Sir, it does seem to me that the course of argument used in opposition to the bill would more become the stump than the Senate of the United States. I have heard no reasoning which satisfied me that a single constitutional principle is in any respect violated by the bill we are about to pass. That the bill might have been more perfect I have admitted. That it might have contained other provisions more restrictive in many respects I am willing to admit. That we may pass a better bill hereafter I am willing to admit; but I think it proper that this bill should pass. I think the bill contains nothing opposed to the Constitution of the country, and nothing that will place the rights of any honest men in jeopardy, or any man's constitutional rights in jeopardy.

Under these circumstances, I can see no reason why the bill should not be sustained by the Senate, in order that, if the corruption which has been alleged for years as existing in Congress, and of which we have now specific charges, does exist, the country may know who are the individuals upon whom to fix it, and that they may be held up to the scorn of their constituents and the condemnation of the whole country.

Mr. BROWN. I have not heretofore said anything in reference to this bill. When it was brought into the Senate I made up my mind at once to vote for it. After a little while, I was somewhat shaken in that determination by the arguments used in opposition to it here, and by the prominent fact which I noticed in the proceedings of the other House, that an honored colleague, whose judgment I am very much accustomed to trust in manners of this sort, had voted against it. I therefore took time to examine it more critically than I should probably otherwise have done; and the result of that examination has brought me back to the same conclusion, that I ought to vote for the bill—not that it is perfect, not that it is such a bill as I should have drafted myself, for I am free to say that, in my judgment, it is defective. In the second section, the whole of which was proposed to be stricken out, I recognize an innovation upon the old established common law principle which all lawyers have been taught to revere. The provision is:

“No witness shall hereafter be allowed to refuse to testify to any fact, or to produce any paper, touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact, or the production of such paper, may tend to disgrace or otherwise render him infamous.”

There is an innovation in that upon the old common law principle; and when my eye first rested on it, it shook my confidence very seriously in the determination to which I had come to vote for this bill; but reflection satisfied me of this important truth: if you fail to enact that provision, all that a witness called upon has to do is simply to say, “I can not answer without impugning my own personal character,” and there would be at once an end of the controversy. If he simply says, “I shall disgrace myself if I do answer,” you have no further question to ask—the whole controversy is at an end, and therefore your law would be inoperative and void absolutely. The witness takes a particular position which surmounts the whole of your legislation, and your inquiry at once comes to a conclusion. Violent cases need violent remedies. While I should be unwilling to see this hallowed principle of the common law overturned in all cases, yet if gentlemen honored with seats in the other House of Congress by the people—gentlemen honored with seats here by the States—can not protect themselves from slander without overturning the principles of common law, they ought to overturn them.

Sir, what is the common law worth to you if you lose your Government? Can you preserve your Government if those who make its laws,

and who hold its destiny in their hands, are disgraced day by day by these slanders constantly thrown out by the newspaper press, publicly proclaimed, and when gentlemen call for the parties who make these declarations, they shield themselves behind the statement, "I can make no disclosure lest I disgrace myself?"

Admitting all that gentlemen say, is it not better to trench on the rights of the individual man than thus to tamper with the great and sacred rights of a Government? How did this controversy commence? First it was openly charged in a newspaper, of almost the largest circulation in the Union, that there was a regular Congressional organization to carry or defeat measures for pay. The charge was openly and undisguisedly made—not through an obscure and neighborhood newspaper, but through one of the principal organs of a great and powerful party, edited in chief by a man who was intrusted with the second office in the gift of the largest State of the Union. The accusation obtained importance, not because it was proclaimed in a newspaper, but because it was proclaimed in a special newspaper, a newspaper edited in a man who had a special and important character in the country.

Mr. WELLER. And moreover the people began to believe it.

Mr. BROWN. My friend says the people began to believe in it. Yes, sir; they began to believe it; and if you tamper with matters of this sort, the people of our country will not only begin to believe it, but they will carry out their belief; the belief will extend across the Atlantic; it will spread to other countries, and by and by, the American Congress will come to be regarded as a mere body of corrupt functionaries, who live not upon their legitimate pay, but upon the corruption fees which they clutch for voting in favor of or against particular measures.

I say the violence of the case justifies this violent innovation upon the ancient common law. Reluctant as I am to give it up—reluctant as I am to put down even in a particular relation this old principle of the law—I believe it necessary to reach the core of this difficulty, and I therefore surmount that point.

Then I thought, in the conclusion of the bill, there was a little backing out from that responsibility which Congress ought to assume in vindication of its own honor. If I had drafted the bill I would not have sent the party to a court. Instead of declaring that "it shall be the duty of the Speaker of the House or the President of the Senate, to certify the fact, under seal of the House or Senate, to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury," I would have the officer make his certificate to the marshal of the District, whose duty it should be to imprison the party in default until he should answer, or it should be the pleasure of the House or Senate to discharge him. Sir, I have witnessed these investigations too frequently here, and seen them end too often in a mere mockery, so as to bring reproach upon Congress and the country. I would have taken up a more violent remedy, and would not shrink from its responsibility because of any apprehension that Congress was to be charged with tyranny.

The Senator from New Hampshire talked this morning about carrying Congress before the country, and about gentlemen being overwhelmed who should vote for this bill. Overwhelmed by whom? Are we not the constituents of the people? and do they not feel as sacred an interest in the preservation of our characters as we can possibly feel for ourselves? Do the people of the States expect us to come and sit quietly under charges such as have been made from time to time of

gross and outrageous corruption, and yet take no steps to satisfy them that these charges are either true or false? The only plea which it is necessary for you to make to the people is simply to tell the truth, the honest facts in regard to this case: that a party charged under oath that two members of the House of Representatives had approached him with corrupt propositions, and when he had made that answer he stopped short and refused to disclose the names of the parties thus accused, in this way leaving 234 honorable gentlemen, intrusted by their constituents, to divide the responsibility. There are 2 guilty parties according to the accusation, and 232 innocent ones; and if he refuse to tell the guilty, who shall decide?

Let me say to the Senator from New Hampshire, if he were a member of the other House the case would come home to him. All his enemy would have to do would be to whisper, in dark, midnight places, "this accusation between you and me, lies at the door of John P. Hale." It would be bruited about through the country. His enemies would believe it, and they would whisper it into the ears of friends not over-earnest. It would get to be believed, and it would spread through the whole country; and yet Congress refuses to give him the means of vindicating his honor.

I will stand, sir, upon no technicalities, when interests, private and public, so important as these, are at stake. I see very clearly, as other gentlemen see, that there may by possibility in extreme cases, by extreme supposition, grow up some oppression under this bill; but I see that the defeat of it, that the refusal to pass it at once by an overwhelming majority, involves consequences yet more important to the individual rights of members and the interest of the whole country, and therefore I vote for it.

I vote for this bill chiefly because it comes to us from the House of Representatives, whose honor is involved in the question of its passage. They ask for its passage that they may have the means of vindicating their honor. That of itself is a sufficient reason why I should support it.

Mr. President, I rose simply to make a remark or two in reference to this bill, to justify myself in voting for a measure which I did not fully approve; and having done that, I have nothing more to say.

The question being taken by yeas and nays on the passage of the bill, resulted—yeas 46, nays 3. (Globe p. 445.)

So the bill was passed, and was approved by President Pierce on January 24, 1857 (Stat. at Large, vol. 11, p. 155), and is now embraced in chapter 7, Revised Statutes.

EXPULSION OF MEMBERS—ALLEGED CORRUPT COMBINATIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.

THIRTY-FOURTH CONGRESS, THIRD SESSION. NATHANIEL P. BANKS, OF MASSACHUSETTS, SPEAKER.

(See preceding case for history of select committee and proceedings.)

The select committee appointed under the said resolution of January 9, 1857, through Mr. Henry Winter Davis of Maryland, David Ritchie of Pennsylvania, and Hiram Warner of Georgia, made separate reports in the cases of Representatives William A. Gilbert, Francis S. Edwards, and Orsamus B. Matteson of New York, and William W. Welch of Connecticut, in which the committee found certain charges made against said members were sustained, and recommended their expulsion. Mr. Kelsey made a minority report in which the ground was taken that the committee was only authorized to inquire into and report the facts to the House (see said report, parts 1, 2, 3, and 4).

On February 20, 1857, the report was taken up, and after addressing the House, Mr. Gilbert presented a paper announcing his resignation as a member of the House from the State of New York. A similar paper was presented on behalf of Mr. Matteson, and on the following day Mr. Edwards announced his resignation as a member of the House from the State of New York. The resolution proposing the expulsion of Mr. Welch was then amended so as to read as follows, viz:

That there has been no sufficient evidence elicited by the committee having charge of this subject and reported to this House in the case of William W. Welch, a member thereof, and that no further proceedings should be had against said member.

The other resolutions as to Gilbert and Edwards were then laid on the table, and the first and second resolutions of the committee as to Matteson, reciting that he "incited parties having large interests in the passage of a joint resolution construing the Des Moines grant to have here and to use a large sum of money and other valuable considerations corruptly, for the purpose of procuring the passage of said joint resolution," and that in making certain declarations as to the association together of certain members and pledges made by them not to vote for certain legislation unless paid therefor, "has falsely and willfully assailed and defamed the character of this House, and has proved himself unworthy to be a member of this House." The resolution expelling the said Matteson was then laid on the table.

In the following (Thirty-fifth) Congress Mr. Thomas E. Harris, of Illinois, on January 15, 1858, submitted a preamble reciting the said resolutions adopted by the House in respect to Mr. Matteson, and that as he was "a member of the present House with the imputations con-

veyed by the two said resolutions still upon him," and a resolution expelling the said Matteson. The matter was referred to a select committee, consisting of James L. Seward of Georgia, Galusha A. Grow of Pennsylvania, John Huyler of New Jersey, William D. Bishop of Connecticut, and Samuel R. Curtis of Iowa. On March 22 following Mr. Seward submitted a report (No. 179) in which the ground was taken that it was not competent for the House of Representatives of the Thirty-fifth Congress to expel or punish a member on account of an act committed while a member of the preceding (Thirty-fourth) House of Representatives, of which said House took cognizance. The subject was discussed at length, and English and other precedents cited, and the following resolution reported, viz:

Resolved, That it is inexpedient for this House to take any further action in regard to the resolutions proposing to expel O. B. Matteson.

On March 27, following, the whole subject was laid on the table.

On February 19, 1857, Mr. Kelsey, from the said select committee, submitted the following general report:

The select committee appointed, in pursuance of a resolution of the House of the 9th of January last, to investigate certain charges referred to in the preamble of the said resolution, and report the evidence taken, and what action in their judgment is necessary on the part of the House, beg leave respectfully to submit the following general report:

That the committee has executed the order of the House as contained in said resolution, so far as time would permit, and that the testimony taken by the committee is herewith reported to the House.

Considerable delay has been caused by circumstances over which the committee had no control. Witnesses, who were sent for at the request of one of the members implicated, could not be produced before the committee until Wednesday the 18th instant, in consequence of the interruption of travel caused by the freshets at the north.

In conducting the proceedings the committee adopted the rule that where testimony was taken tending to implicate any member of the House, a copy of such testimony should be furnished to such member, and an opportunity given him to explain or contradict it by other evidence; or if the member desired to do so, by his own statement, under oath or not under oath, as he might think proper. This course was regarded by the committee as more liberal toward the members whose conduct might be called in question than to pursue the practice in some former cases of merely reading the testimony to them. And every member, who is in any degree implicated by the testimony taken, was informed that if he desired it the witness or witnesses by whom he was implicated would be recalled by the committee for examination. But none of these members have seen fit to avail themselves of the opportunity to cross-examine any of the witnesses.

The committee encountered serious difficulty in procuring reliable information as to where they should look for testimony having relation to said "corrupt combinations to pass or prevent the passage of measures during the present Congress." The editor of the paper which published the charge upon which this investigation was in part ordered, was called as the first witness; but upon examination it appeared that his information was founded on "moral convictions" only; for he was unable to furnish the committee with the name of any witness whose testimony, if taken, would, in his judgment, go to convict anybody of the charge.

The committee did not feel at liberty to notice in any manner the numerous anonymous communications received by them, and no proceeding or inquiry has been instituted upon any such communication. But in every case where a responsible person has suggested an inquiry, or pointed to a witness who could probably prove a material fact, the investigation has been made as full and thorough as it was in the power of the committee to make it.

The examination of the witnesses produced was conducted, at the request of the chairman, mainly by the other members of the committee. Every member of the committee was requested to put such questions as would, in his judgment, tend to draw out every material and pertinent fact within the knowledge of the witness. When an objection was made to a question, or when a witness declined to answer for reasons assigned, the committee carefully considered the question thus presented for their consideration, and in every instance where they could discover any grounds whatever for regarding the question propounded as objectionable, it was modified or withdrawn, and it is gratifying to be able to state that in every instance the decisions of the committee upon questions of this character have been unanimous. In some cases witnesses have declined to answer questions that were not legally objectionable, for reasons which they assigned to the committee. Mr. Simonton declined to answer a question of this character, solely upon the ground that to do so would be a violation of confidence that he had pledged to the persons by whom a corrupt proposition had been made to him. The House has already passed upon that case, and it is not probable that such a reason will again be offered to a committee of either branch of Congress for refusing to answer a proper question.

The committee do say that no such general combinations as have been charged are proved to exist. Four cases have come to their knowledge, in which individual members are implicated. Each of these cases is made the subject of a special report, and it is therefore unnecessary to notice them here.

No other member of the House is in the slightest degree implicated by any of the testimony that has been taken by the committee.

The charge that corrupt combinations existed in Congress has been often made, but never with more directness and certainty than during the present session. Prominent amongst those engaged in making this charge was James W. Simonton, the regular Washington correspondent of the New York Times. The committee summoned Mr. Simonton as a witness, and he was examined several times as to his knowledge on this subject. It is unnecessary here to state the circumstances of his refusal to answer a question propounded by the committee and his confinement in custody of the sergeant-at-arms by the House for contempt; but it is proper to state the reasons that induced the committee to move for his discharge from the custody of the Sergeant-at-Arms. In his testimony, given on the 15th day of January, Mr. Simonton says:

"Members of Congress, more than one, have come to me and asked a private interview, stating that they had something of importance to say to me. They have asked me whether they could talk to me with a perfect reliance upon my good faith, and whether I would agree, under no circumstances, to reveal the names. In my profession such questions are put to me almost every day—I do not know whether the party approaching me desires to communicate public documents or news of interest to me—and I always, unless I have some special reasons for

supposing that the particular individual has an improper proposal to make, accept their confidence, and give my unqualified promise not to reveal their names. Having thus entered into the interview with them, members of Congress have requested me to procure for them interests in particular measures, named by them, pending before the House, stating the amounts which they desired to receive for such aid as they should be able to give. I have, in every case, quietly dropped the matter, with the suggestion that it would not do for me to be mixed up in anything of the sort. * * *

* * *
 "By Mr. ORR. You stated that certain members had approached you and desired to know, through you, if they could not procure money for their votes upon certain bills; will you state who these members were?"

"WITNESS. I can not without a violation of confidence, than do which I would rather suffer anything.

* * *
 "By Mr. WARNER. Will you state how many members of Congress have made these confidential communications to you, whose names you do not feel prepared to reveal?"

"WITNESS. Two have made them direct; others have indicated to me a desire to talk with me upon these subjects and I have warded it off, not giving them an opportunity to make an explicit proposition.

"By Mr. WARNER. What do I understand you to mean when you say these communications were made direct?"

"WITNESS. I mean that after having obtained my promise of secrecy in regard to them, they have said to me that certain measures pending before Congress ought to pay; that the parties interested in them had the means to pay; that they individually needed money and desired me specifically to arrange the matter in such way that if the measures passed, they should receive pecuniary compensation.

* * *
 "By Mr. DAVIS. In the confidence you promised these men, did you promise them to make no reference to the matter to which the confidence related?"

"WITNESS. No, sir.

"By Mr. DAVIS. Did you promise them you would not mention their names?"

"WITNESS. I did promise that under no conceivable circumstance would I mention their names in connection with the subject-matter before us; or, in other terms, that I would never permit them to be in any way held responsible for anything that should pass between us."

The answers to these questions were revised by the witness after being written out.

On the 20th of January, Mr. Simonton was recalled, and the following question was propounded to him:

By Mr. ORR. The committee have determined, by a unanimous vote, to recall you for the purpose of insisting upon an answer to the following question, which you declined to answer upon your previous examination: "You state that certain members have approached you, and have desired to know if they could not, through you, procure money for their votes upon certain bills; will you state who those members were?"

To this interrogatory he responded as follows:

WITNESS. Before stating the determination to which I have come upon this subject, I desire to say that I do not here dispute the power of the committee, and I have not heretofore declined to answer that question upon any such ground. I have

all respect for the committee and the House. I do not decline in order to screen the members. My declination was based upon my own convictions of duty. Since I was last before the committee, in deference to their judgment and wishes, I have examined the case of *Anderson v. Dunn*, to which they referred me, and have considered very fully what I ought to do in view of that decision, as well as in view of other considerations. The result of my deliberations upon the subject has been to confirm me in the opinion that, whatever penalty I may suffer, I can not answer that question. I beg the committee to understand that I have no other motive whatever in declining, but the simple one that I have stated before, that I do not see how I can answer it without a dishonorable breach of confidence. The answer to the question can by no possibility be supposed to reflect discredit upon myself; and I presume that my statement of that motive is corroborated by the facts as they appear before the committee. I must insist on declining to answer that question.

On the 4th day of February this witness was again brought before the committee for further examination. His replies to the questions propounded to him were not satisfactory. He desired to alter and explain his former testimony. After being permitted to retire from the committee room three times during his examination, for the purpose of consulting his counsel, and not having given a satisfactory answer to any question during two and a half hours that he was under examination, most of which time was occupied by him in writing down the questions and his answers, and in looking over his notes, the witness was taken ill, and his examination was suspended.

On the 7th of February this witness was recalled, and the following question was propounded to him in writing:

By the CHAIRMAN. "Have you been solicited by any member of the present Congress, directly or indirectly, to make any arrangement by which the member was to receive any valuable consideration for his support of any measure during the present Congress?"

The witness, after writing down his answer, answered as follows:

I can not say, under oath, that I have, and never have intended to be understood so to mean.

This answer, being directly contradictory of the previous testimony of this witness, satisfied the committee that they ought not to press his examination any further.

It also appears from the testimony of this witness, that while occupying a seat as reporter on the floor of the House, he personally aided in the passage of the Wisconsin land bill, under a promise of receiving a certain compensation, if the bill passed; but he "has no legal claim for such service, and has not received the fruit of any such interest." He also aided an old friend of his in passing a private bill through the Senate, for which service he accepted a small compensation.

In view of all these facts, the committee deem it their duty to report a resolution for his expulsion from the House as a reporter.

From the testimony taken, it appears that the general charges of corrupt combinations in Congress originate from men who expect to make money by creating the belief that such combinations exist. If they can cause it to be generally believed that it is necessary to use large sums of money to carry measures through Congress, it follows that somebody must be employed to apply it; and the man who knows most about corrupt combinations would be the one naturally sought for and employed as broker to buy up the votes of members who had entered into such combinations. The broker in Congressional corruption would receive money to buy up the combination, and whether he puts the money in his own pocket or pays it to somebody else can never be known by the parties who furnish the money. They are all engaged in a criminal transaction, in which the broker has a decided advantage. His employers must be satisfied without an account, or

with any account of his agency that he may choose to render; and the probability is, that, in addition to his own stipulated compensation, he will pocket the whole corruption fund. It is to be expected that this class of men will continue their labors to uphold the belief that the legislation of Congress can be controlled by the use of money.

Newspaper correspondents are always on the watch for news, and are particularly anxious to be first in giving to the public some piece of "startling intelligence" or "astounding development." When informed by persons, interested perhaps in creating the impression that the story is true, that corrupt combinations have been formed among members of Congress, they immediately send the rumor thus started to their respective papers, and it is published, in one form or another, by every newspaper in the country, with such comments or variations as the editors of the different papers may see fit to make. Such publications aid these brokers in corruption, by producing the belief that it is necessary to use money, and to employ some agent here who knows how to apply it, to get any measure through Congress. A short extract from the testimony of F. F. C. Triplett, a witness examined before the committee, will show the impressions made upon his mind, and doubtless upon the minds of others, by the often reiterated charges of "corruption in Congress:"

WITNESS. I will say this: I have never been the instrument of anybody else for payment to procure the passage of moneyed or land bills through Congress. I have never approached any member upon any subject with an improper proposition.

By Mr. ORR. Have you been brought in contact with any member in that connection?

WITNESS. I have. I suppose there is nobody who knows the organization of Congress who expects to carry anything through it merely from love of justice.

By Mr. ORR. Is that the general reputation of Congress?

WITNESS. That is the general reputation of Congress.

The testimony of Elijah Kingman, George Wood, and Joseph L. Chester gives so clear a view of the manner in which these wholesale charges against members of Congress are manufactured and circulated, that the committee deem it proper to refer to them particularly here.

ELIJAH KINGMAN, sworn:

By Mr. ORR. Mr. Kingman, you are a regular correspondent of the press in this city?

WITNESS. Yes, sir.

By Mr. ORR. Has ever any proposition been made to you, by any member of Congress, to convey to you any land or lands, in consideration of your aiding the passage of any railroad or other land grant in Congress through your correspondence?

WITNESS. I never conversed with any member of Congress upon the subject, and never received any overture from any member of Congress on the subject.

By Mr. ORR. Do you know anything of the combination which you have seen charged in the press amongst members of Congress?

WITNESS. Nothing but what I have heard here for twenty years before.

By Mr. ORR. Then you know nothing of your own knowledge?

WITNESS. I do not.

By Mr. ORR. Do you know of any corrupt influences resorted to to procure the passage of any measure during the present Congress?

WITNESS. I do not; if I did I should state it, very frankly.

By Mr. DAVIS. Do you know of any member having any interest, direct or indirect, in any measure passed or pending in Congress?

WITNESS. I do not. *I know nothing of my own knowledge. I have heard rumors, for a great many years, of members being interested in this thing or that thing. I have seen it in every paper in the United States, but I do not know of any fact which tends to prove the existence of such a matter.*

GEORGE WOOD, sworn:

By Mr. ORR. Are you the author of letters from Washington, published in the Examiner or New York Recorder or New York Baptist?

WITNESS. Signed 'R. W.'—I am.

By Mr. ORR. Are you the author of the letter, No. 4, dated January 10, 1857?

WITNESS. Yes, sir.

By Mr. ORR. In that letter is the following paragraph:

"This is a most important movement, and one which will, I trust, be acted upon with nerve and energy by the committee of five to be selected by Mr. Speaker Banks. If it is, it will reveal some most astonishing facts to the country, and show the vast sums paid for the passage of acts for contracts, for grants of lands to railroads, and the like. I was told by a gentleman of standing, not long since, that there existed a *tariff of bribes* agreed upon by as many as 30 members of the House, who were pledged to each other to vote all together, ranging from \$50 to \$5,000, according to the magnitude of the act and the benefits it conferred upon the applicants. But can this matter be probed? Is it not one of the seven labors of Hercules, and for which there is now no space of time left for any real effort? But it may be the beginning of an end."

Have you any personal knowledge of the facts contained or set forth in that article?

WITNESS. I have no other knowledge than that communicated to me by the person to whom I refer to in the article.

By Mr. ORR. Then these facts were communicated to you by another person?

WITNESS. Yes, sir.

By Mr. ORR. Who was the gentleman?

WITNESS. I was endeavoring to remember his name. I met him at a friend's house, when he made the statement which I there put down. The matter came up in conversation. His name now escapes me; but if it is important, I will ascertain and give the name to the committee.

[The witness subsequently appeared and handed in the name of Gen. Tench Tilghman, of Eastern Shore, Maryland.]

Here is a case in which a newspaper correspondent of a *religious* paper writes and sends for publication, upon the authority of a person whose *name* he does not recollect, a direct and circumstantial account of a corrupt combination of 30 members of Congress, who he alleges have agreed upon a "*tariff of bribes*" "ranging from \$50 to \$5,000." And the man who published this grave charge to the world was so careless as to the authority he had for making it, that he did not remember even the name of his informant. True, he was able to ascertain the name on making inquiry, and gave it to the committee; but the case serves to show the utter recklessness with which such charges are made, and how entirely unreliable they are.

The committee immediately caused Gen. Tilghman to be summoned as a witness. The summons found Gen. Tilghman confined by sickness, as appears by his own letter, and the statement of his attending physician addressed to the Speaker, which will be found at page — of the evidence accompanying this report. In his letter, Gen. Tilghman states that he is not aware that he has any information of the kind referred to, and offers to give his deposition in the fullest manner if some one could be sent to take it. Under these circumstances, and in view of the explicit denial of any knowledge on the subject by Gen. Tilghman, it was deemed inexpedient to pursue this branch of the inquiry any further.

The testimony of Mr. Joseph L. Chester furnishes an instance of another kind of charge. From a casual reading of his article in the *Pennsylvania Inquirer*, it would seem that he could furnish positive evidence of corrupt combinations in Congress; but the explanation of the article furnished by his own testimony, shows that he had no knowledge on the subject, and had no reason to believe that any member of Congress had been engaged in any corrupt combination whatever.

JOSEPH L. CHESTER, sworn:

By Mr. RITCHIE. Are you the author of the letter published in the *Pennsylvania Inquirer*, dated Washington, January 9, 1857, signed "Connecticut?"

WITNESS. I am responsible for it.

By Mr. RITCHIE. In that letter there is this paragraph:

"Two of the leading New York journals have been making a great fuss over a mare's nest they profess to have found in the present Congress, in the shape of a corrupt organization composed of sundry members and lobby agents, and, from the character of their articles, one would suppose that they alone possessed all the honesty there is in the country. If these two papers are sincere in their crusade, I would suggest to them that they might evince greater consistency by first calling home their own representatives here, than whom there are no parties in Washington more deeply interested in the prosecution of claims and engineering of bills through Congress. I write only what I know, and I know much also about the 'corrupt organization' alluded to, and may find it necessary before many days to send you some revelations that will astound the community. In connection therewith, there will be sundry little episodes, known only to myself and the parties implicated, the recounting of which will be as fatal to the individuals exposed as though a keg of gunpowder had exploded beneath their feet. Stand from under when the torch is applied."

Will you please to state what you know about the corrupt organization among members of Congress either to pass or prevent the passage of bills in the present Congress? Do you know of any such organization?

WITNESS. I do not know of any corrupt organization in which members of Congress are concerned.

By Mr. RITCHIE. Do you know of any case in which a valuable consideration, either in money or in anything else, has been paid or promised to any member of Congress for his vote in favor of or against any measure during the present Congress?

WITNESS. I do not.

By Mr. RITCHIE. Do you know of a case in which a member of the present Congress has either supported or opposed any bill before the House from any motives other than such as are obligatory upon every member of Congress, in the discharge of his official duty—that is, from any other considerations than those of public propriety?

WITNESS. I do not.

By Mr. WARNER. Do you know of any agreement that has been made with any outsider, or held by any third person, by which members of Congress were to receive a present or prospective benefit for the passage of any bill?

WITNESS. I do not. I find that since I have returned to the city that I am understood in saying in that letter, "if these two papers are sincere in their crusade, I would suggest to them that they might evince greater consistency, by first calling home their representatives here," to refer to representatives in Congress. We have to write these things *currente calamo*. I intended the representatives of those papers, and not representatives in Congress. I did not intend, in writing this paragraph, to assert anything against members of Congress. The only idea I had was a combination outside entirely.

By Mr. ORR. Then you have misconceived entirely the whole purport of the articles in the New York papers. The charges contained in them are specific in relation to a combination which extends to members of Congress?

WITNESS. The only trouble in this thing is this: I spoke in the first part of the article of a corrupt organization composed of sundry members and lobby agents. That I do not know anything about, so far as the members are concerned. I do not know of a single member who is engaged in these corrupt combinations, either directly or indirectly, and I have no reason to believe there is one who is. But in the latter part of the paragraph I say that "I know much also about the corrupt organization alluded to." I have got the words "corrupt organization" into quotation marks, and there, again, is where the difficulty occurs.

By Mr. ORR. You do not know, then, of your own knowledge, of any member who has received any pecuniary benefit for any vote he has given upon any measure before this Congress?

WITNESS. No, sir.

So the writer of this article knows absolutely nothing about any "corrupt organization" in Congress.

But it is useless to pursue this subject any further. These examples are sufficient to show how recklessly the most infamous charges are preferred against a body of men occupying an important position, much of whose usefulness depends upon their retaining the confidence of their constituents and the country, by writers for newspapers who would hardly venture to assail the character of an individual without positive knowledge of the truth of their charges. Perhaps no legislation can reach this evil.

For the licentiousness of the press, the only remedy is the exposure of that licentiousness before the people; for when it has been exposed,

its libels will fall harmless; it will be no longer able to shake by its imputations the confidence of the people in the purity of their representatives.

The business of vote-brokerage can be reached only by exposing the cheat. When people are informed by the report of this investigation, and more authoritatively by a vote of the House, that these lobby agents, who boast their power over the votes of members, have no vote that they can influence and are cheating the claimant by libeling the Congress, their business will be gone. Even the corrupt men who are willing to pay a bribe, if there be any one who will receive it, will no longer pay large sums to lobby agents to be expended at their discretion; for they will learn that they have been cheated by their accomplices, and that honor among thieves has ceased to be a principle observed.

But another great evil is the practice of giving large contingent compensations, payable on the success or failure of measures before Congress, and the secrecy with which the interests which prompts the activity of the party is covered from the members approached. "Influences secretly urged under false and covert pretenses, must necessarily operate deleteriously on legislative action, whether it be employed to obtain the passage of private or public acts," say the Supreme Court of the United States. "Bribes in the shape of high contingent compensation must necessarily lead to the use of improper means and the exercise of undue influence. The necessary consequence is the demoralization of the agent who covenants for them; he is soon brought to believe that any means which will produce so beneficial a result to himself are proper means; and that a share of those profits may have the same effect of quickening the perceptions and warming the zeal of influential or careless members in favor of the bill. The use of such means and such agents will have the effect to subject the State governments to the combined capital of wealthy corporations, and produce universal corruption, commencing with the representative and ending with the elector. *Speculators in legislation, public and private—a compact corps of venal solicitors*—vending their secret influences, will infest the Capitol of the Union and of every State, till corruption shall become the normal condition of the body politic, and it will be said of us as of Rome, '*omne Romæ venale*.'" (16 How. R., 335.)

The same high tribunal declares that some of the cases decided already declare, first, "that all contracts for a contingent compensation for obtaining legislation, or to use *personal*, or any *secret* or sinister influence on legislators, are void by the policy of the law; and second, that secrecy, as to the character under which the agent or solicitor acts, tends to deception, and is immoral and fraudulent."

The committee think that acts so grossly tending to corrupt the sources of legislation should be made penal offenses. No one then can speculate on the uses of a contingent fund without in the very act encountering the pains of the law; and no secret agent can wind himself into the confidence of a member of the legislative body without encountering the same penalties. The legislator well knows the strength of the motive, and can accordingly weigh the interest against the argument; and compensation may, by its very amount, decisively prove the contemplation of dishonest purposes to be subserved by it; and the agent himself will be deprived of the opportunity of obtaining from his employer large sums under the pretext of distributing them among members, but in reality to be embezzled for his own use, with-

out having the fact that such sums have been *paid* exposed to the public, and putting the people, and the Congress, and the claimant, on the watch for the course which it may take and the traces of its influence.

To meet and remedy, or at least to mitigate, these evils, the committee have unanimously ordered the following bill to be reported, with a request that it be printed and referred to the Committee of the Whole on the state of the Union. They do not ask its consideration as matter of privilege, because of the advanced period of the session, but they are unwilling to close their investigation without submitting to the consideration of the House and the country a measure which the next Congress may be enabled to perfect and enact into a law, which will, with the law of 1853 and the law touching recusant witnesses, of this session, throw all the guards around the government against corruption that can be afforded by any legislation.

The committee submit the following resolution:

Resolved, That James W. Simonton be expelled from the floor of this House as a reporter.

W. H. KELSEY.
JAMES L. ORR.
HENRY WINTER DAVIS.
DAVID RITCHIE.
HIRAM WARNER.

A BILL to protect the people against corrupt and secret influence in matters of legislation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall, directly or indirectly, offer or agree to give any money or other valuable thing, or security for any money or other valuable thing, to any person for the service of such person, or of any other person, in aiding or advocating or procuring the passage or defeat of any measure before either House of Congress, or any committee of either House, to be paid or delivered on the contingency of the passage or defeat of any measure before either House of Congress, or before any committee of either House; and that no person shall agree to accept or receive, or shall accept or receive, any money or other valuable thing for aiding or advocating or procuring the passage or defeat of any measure before either House of Congress, or before any committee of either House; and that every bargain, contract, or security for any such compensation on any such contingency, and all shifts and contrivances to cover or conceal such bargain, are hereby declared null and void; and the parties to any such bargain, contract, agreement, or understanding, as well the party to pay as the party to receive the money or other valuable thing, or security therefor, on any such contingency as is above indicated, are hereby declared guilty of a misdemeanor; and on conviction thereof before any court of the United States having jurisdiction of the said offense, shall suffer imprisonment in the common jail for not less than six months nor more than one year, and be subject to a fine of not less than one hundred dollars nor more than one thousand dollars.

SEC. 2. That no person having any interest in the passage or defeat of any measure before either House of Congress, and no agent or person acting for or representing any other person as agent or attorney, in law or in fact, for procuring, aiding, or advocating the passage or defeat of any measure before either House of Congress, or before any committee of either House, shall approach, converse with, or explain to, or in any manner attempt to influence any member of either House relative to such measure, without first distinctly disclosing to such member whether he is interested personally in his own right or as agent for any other person in the passage or defeat of such measure; and any person who shall violate the provisions of this section, is hereby declared guilty of a misdemeanor, and on conviction thereof before any court of the United States be punished by imprisonment for not less than one month nor more than one year, and by a fine of not less than one hundred dollars nor more than one thousand dollars.

**ALLEGED BRIBERY AND CORRUPTION IN THE TARIFF ACT OF
MARCH 3, 1857—CONTUMACIOUS WITNESS—CERTIFICATION TO
DISTRICT ATTORNEY OF THE DISTRICT OF COLUMBIA UNDER
THE ACT OF JANUARY 24, 1857 (STAT. AT LARGE, VOL. II, P. 155).**

**THIRTY-FIFTH CONGRESS, FIRST SESSION. JAMES L. ORR, OF SOUTH CAROLINA,
SPEAKER.**

CASE OF JOHN W. WOLCOTT.

This being the first case in which a contumacious witness was certified to the district attorney for the District of Columbia under the act of January 24, 1857 (Stat. at Large, Vol. II, p. 155), embraced in chapter 7, Revised Statutes, the debates and proceedings in respect to the matter are given in full, in order that the contemporaneous construction given said act, and the forms and methods observed and pursued under it, may be conveniently referred to.

It will be observed that no record—either in the Journal of the House of Representatives or in the Congressional Globe—appears of the action of the Speaker in certifying the fact of the failure or refusal of the said Wolcott to testify before the said select committee, to the district attorney for the District of Columbia as authorized and required by the act of January 24, 1857. The third section of that act in which it is made the duty of the Speaker of the House of Representatives or the President of the Senate “to certify the fact, etc.,” was offered by Mr. John Letcher, of Virginia, as an amendment to the substitute submitted by Mr. Davis, of Maryland, in behalf of the committee for the original bill, and was accepted by said committee and became a part of said substitute. It was not debated either in the House or Senate, and seems to have been interpreted as a mandatory provision requiring the officers named “when a witness shall fail to testify etc., * * * and the facts shall be reported to the House, etc.,” which should be taken notice or cognizance of by either of said officers, as the case might be, as in respect to any other provision of law.

The certificate of the Speaker to the district attorney of the facts in the case, does not appear as a part of the record in the Supreme Court of the District of Columbia, furnished by District Attorney Birney, which is appended hereto, but from the newspapers of the day, it duly appears that such certificate was made by Speaker Orr, but not reported to the House and entered on the Journal, as would seem to have been proper in order to complete the record.

* * * * *

JANUARY 15, 1858.

[Globe p. 304.]

PASSAGE OF THE TARIFF OF 1857.

Mr. STANTON. I offer the following resolutions:

Whereas a published report of a committee appointed to investigate the affairs of the Middlesex Manufacturing Company, in the State of Massachusetts, alleges that said company paid \$87,000 to secure the passage of the tariff of 1857 and after charging that \$8,000 of this sum was disbursed by the New York house for printing, further alleges that no satisfactory explanation has yet been afforded of the application of the balance; and whereas said charges tend very seriously to prejudice the reputation and character of the members of this House who were members of the last Congress, and participated in the passage of the tariff of 1857: Therefore, be it

Resolved, That a committee of five be appointed by the Speaker to investigate said charge, and to inquire whether any member or officer of this House received any part of said sum; and that said committee shall have power to send for persons and papers.

Resolved, That if said committee shall find that any part of said sum was paid to, or for the use or benefit, either directly or indirectly, of any member or officer of this House, that said committee shall present specific charges against the party so charged.

Resolved, That if any such charges shall be presented by said committee, another committee of five shall be appointed by the Speaker to investigate the charges so presented; and the parties so charged shall have notice of the times and places of the meetings of said committee, and the right to be present at the taking of the evidence against them, and to cross-examine the witnesses against them, and have process to compel the attendance of witnesses in their defense.

Mr. Speaker, I have delayed the offering of these resolutions for some time longer than I should have done, in the expectation that some gentleman who favored the passage of the tariff of 1857 would have asked for this investigation. It has not been done, however. And this information has been presented in such a form as to seem to me to demand the notice of the House. It is not a mere newspaper rumor, but the report of a committee appointed by a moneyed corporation to investigate its affairs and the disbursement of its funds. That report charges that this expenditure was made for the purpose of affecting the legislation of the House. It is not proper for me now to express any opinion as to whether those who make this charge are doing it for the purpose of covering up their own delinquency, or whether it is true in point of fact; and if true, whether the money was paid to members of the House, or whether it was paid in other modes to influence the action of the House. I regard it as being sufficiently authentic to require this investigation.

Mr. Speaker, it will be observed that these resolutions differ somewhat from the ordinary course pursued in inquiries of this description; though, really, inquiries of this description are not very common. In the resolution raising the committee of inquiry, I propose to direct the mode of proceeding upon the coming in of the report of the committee. I do so for this reason: I think, if the committee is to be raised at all, it is indispensable that that committee should know what disposition is to be made of its report, what action is to be had on it for the purpose of governing it in its proceedings. If the House is to act on the testimony given before that committee, then it becomes the imperative duty of the committee, if any member or officer of the House is charged, to give notice to the party so charged of what the evidence is, and to give him an opportunity of bringing evidence for the purpose of exculpating himself from the charge.

Now, sir, I do not believe that any committee of this House can properly combine the functions of a grand and petit jury; for, sir, if the committee charged with the investigation is to inquire generally whether crimes and offenses have been committed, is compelled to give

notice to the parties charged, whenever testimony is brought before the committee implicating them, it is at once to give notice to those parties, and to other parties, what line of investigation the committee is pursuing, and to put them upon the *qui vive*, if you please, for the purpose of preventing a successful termination of the labors of the committee. They will operate out of doors to counteract the proceedings of the committee, and use influences to prevent the committee from getting the testimony necessary for the fullest and most effectual investigation. It is indispensable to the successful prosecution of an inquiry of this kind, where no person is specifically charged, that the proceedings of the committee originally instituted to investigate it should be kept secret. The committee ought to have the privilege of going into their room, of locking their door, and preventing the world from knowing who is implicated by the testimony which is submitted to them, so that they may thereby prevent outside influences from operating to prevent them from prosecuting their labors to a successful issue.

I think it is important that this committee should know, before it enters upon the discharge of its duties, whether it is the intention of the House to act upon the testimony taken by it, and to censure, expel, or punish, in whatever manner it may see proper, any person who may be charged; because, upon that would depend, essentially, the course the committee would take in the prosecution of their investigation.

I am perfectly aware that there is no precedent for the course of proceeding I propose, and I am also aware that there is no precedent against it, except in the investigation had before the last House of Representatives. Sir, there has been no other investigation before the American Congress predicated upon a general charge, without naming the person who is to be affected by the charge. In that consists the difference between this and the other charges heretofore made, and tried before the House. Where a resolution charges a member or officer of the House, by name, there is no difficulty in the course of proceeding. There the resolution adopted by the House stands for an indictment, and the committee appointed for the purpose of investigating that charge, performs the functions of a petit jury, and the person charged, of course, has the right to notice of all times and places of meetings of the committee, to be present to hear the testimony against him, and to have process to compel the attendance of witnesses in his favor, and the privilege of cross-examination. There is, therefore, no difficulty in a case where a member is named in the resolution. But there is no instance, except that of the last Congress, where a general resolution was introduced, based upon rumors that effected the whole body without naming any individual, where the member has been dealt with upon the testimony taken before such a committee.

I regard it a matter of very great importance, as a mere matter of precedent, that this question should be settled rightly. I claim that the proceedings of the committee of the last Congress can not be regarded as setting a precedent, on account of the peculiar circumstances in which they were placed. I have no fault to find with the course they pursued *under the circumstances*. They were appointed near the close of the Congress. No other course was practicable, without defeating the ends of the investigation. They therefore were compelled, in their deliberations, to combine the functions of a grand and petit jury, to inquire into the charge, and also to report the testimony, and a resolution of expulsion.

Sir, that investigation, and the matters connected with it, satisfy me that the peculiar circumstances of that case ought not to be brought

into a precedent for the future action of Congress. I will advert to some few circumstances to show how it operated. The committee employed a stenographer; they took down the testimony of the witnesses as it was delivered in the committee; it was written out by the stenographer; and when it was written out, the witnesses had the opportunity of reading the testimony, and, of course, of correcting it—it was right that it should be so, and it ought not to be otherwise; but, sir, the party to be affected by this testimony was not present when the oral evidence was given, and never saw that part of the evidence reduced to writing, and which was stricken out before it was submitted to the party charged. He was not furnished with the facilities which oral testimony would have furnished for the contradiction of witnesses. It was a matter of necessity. You recollect difficulties grew up in the progress of the investigation, in consequence of corrections being made in the testimony, it being disclosed that oral testimony had been given before the committee which never was submitted to the party charged with the offense. Now, it is easy to see that a party may be deeply prejudiced—not having the witnesses before him, and the testimony taken in his presence upon which he is to be tried—by an opportunity being given to the witnesses to correct their testimony, the party to be affected by it having no opportunity of knowing what it is until it has been corrected and all contradictions effaced.

Now, sir, I take it for granted that this House will not desire to combine the functions of a grand and petit jury in one committee. If they do not, what is to be done? One of two courses must be pursued: Either the party must be tried at the bar of the House, and all the testimony taken *de novo* orally before the whole House; or else the testimony taken by a committee appointed for that purpose must be reported to the House, and the party be tried by the House upon that testimony. I know it was said at the last Congress that the party was tried by the House, that his trial was in the House; but, sir, what lawyer, or what man of ordinary intelligence, does not know that the essential part of a trial is the evidence? How can it be said that a man is tried before the House when no witnesses are examined before the House; when all the testimony is taken elsewhere; when he can know nothing of what transpired in the committee room? I assume, although it may not be impracticable absolutely to try a party and to produce the evidence against him at the bar of the House, yet that it is so exceedingly inconvenient that it could never be extensively resorted to. Any other course is in plain violation of that constitutional provision—a provision in the Constitution of the United States, as well, perhaps, as in the constitution of every State in the Confederacy—that every party charged with an offense shall be entitled to be tried, and to have his accusers and the witnesses brought before him face to face. It will not do for gentlemen to seek to escape this plain provision by saying that the House has no power to inflict any common-law punishment upon the offender. Why, sir, the condemnation which this House pronounces upon one of its members is worse than death. There is no honorable man who would not rather suffer death than a condemnation for bribery at the hands of the House of Representatives of the United States.

I submit, therefore, that it is due to any party who may be charged that he shall have all the privileges guaranteed to the meanest criminal arraigned for the most trivial offense in the lowest court in any State of the Confederacy. For this reason, and with a view to enlighten the committee as to what is to be the further action of the House, I offer these resolutions.

Mr. WHITELEY. I wish to ask the gentleman from Ohio if this House has the power to try one of its members, against whom, as a member of the last House, there is a charge of corruption?

Mr. STANTON. I take it for granted that this is one among the numerous questions that may be considered by this House. I should, however, strongly incline to the opinion that if a member of the House were convicted of bribery, he would be rendered ineligible to hold a seat on this floor. That is my present impression, and I should be likely to vote on that impression. Still, I am open to conviction. At all events, the question is certainly not so clearly the other way as to justify this House in refusing any investigation. Now, Mr. Speaker, I have no desire to occupy the attention of the House longer, or to engage in any general debate; nor have I any desire to prevent any gentleman who desires to move an amendment to the resolutions, or to resist the adoption of them altogether from doing so; therefore I do not demand the previous question, but submit the resolutions to the House.

Mr. BURLINGAME. Inasmuch as the firm whose transactions are to be inquired into, under the resolutions that have just been offered by the gentleman from Ohio, had its chief establishment in the State which I, in part, represent, a few words from me may not be deemed inappropriate. As a general rule, Mr. Speaker, I would, as a member of this House, be against taking cognizance of any transaction that did not occur in the presence of the House or in the presence of the Senate, or so near them as to interrupt the deliberations of Congress. I would not, sir, desire to enlarge the powers of this House. I would not have the House take jurisdiction of matters which might more properly be taken charge of and investigated by other tribunals established under law for the purpose of securing to the citizen of the country his rights. But in this case, sir, I would depart from this general rule of the policy which I would establish for my own guidance. So many charges have been made—with what motives and for what purpose I will not undertake to intimate—by individuals and by partisan presses, so many charges of a grave character have been made, that it seems to me that the House will consult its dignity as well as its honor, by adopting these resolutions.

Of the charge found by an investigating committee, on the books of Lawrence, Stone & Co., I know nothing save what I have seen in the newspapers. I do not know by whom that charge was made, or for what purpose it was made. But it seems to have been found on their books by an investigating committee.

I know that that committee made no charge, even by innuendo, against this House, or any member of it; but, I say, charges of a grave character have been made by responsible persons; and because they have been made, I, for one, speaking as one of the representatives of Massachusetts (and I think I may speak for all of my colleagues), welcome that resolution of inquiry and investigation, and I do hope that this matter may be probed to the bottom. But I take occasion here to say—and I believe the heart of every member of the House will respond to what I say—that I do not believe that the hands of any member of the House have been stained by the money of Lawrence, Stone & Co. I do not wish to deepen or to darken the cloud that already rests on that house. No, sir; the name of the senior partner of that house is one which has stood, and which stands to-day, because of the noble men who are dead, who have borne it, and because of the noble men who yet live who bear it—has stood as the very synonym of mercantile integrity and honor. That name will live perpetually in the history of the great cities which bear it, east and west, forever and

forever. And my hope is, that this investigation will disclose that the senior member of that firm has been more overtaken by misfortune and by folly, than by any intentional crime; but whatever he may have done, whatever may have been his motive, although I have known him somewhat in other days, although I have been proud to esteem him as a friend, I would not shield him, I would not improperly remove the dark cloud of suspicion that rests upon his name; nor would I attempt to shield any member of this House. I say again, that I am for the resolution. It seems to be of a large scope. It seems to complicate many affairs. I do not know that it might not be improved by amendment; but, after all, I am for the substance of it. I agree with the gentleman from Ohio [Mr. STANTON] in what he said as to the manner in which this investigation should be conducted. It should be conducted in such a way as that no bounty should be paid to informers; no inducements should be offered to outsiders, to malignant, bitter men, who, for the sake of gratifying their malice and malevolence, may seek an opportunity of a committee of investigation and inquiry of this House, to fix upon a man a stain which the gentleman from Ohio says is worse than death.

I say, I trust that the committee will so conduct the investigation as not to permit these men to accomplish their private malevolence and malice. I do not know that it is necessary for me at the present time to say more; and with these remarks and statements of the purposes which induce me to support the resolutions, I take my seat.

Mr. DAVIS, of Maryland. Mr. Speaker, the application for an investigation has been met by a gentleman from the Commonwealth where the occurrences arose, with a proper and becoming spirit. Whether there are adequate grounds presented, upon which this House ought to condescend to investigate the charge against the honor of its members, is a question which I do not now design to discuss. The resolutions of inquiry shall have my vote. The gentleman who proposed them holds upon this subject a position which, perhaps, very few others in the House hold. He is so fortunate as to have secured himself, by his course on the tariff bills of the last session, from the insolent insinuations of a vituperative and lying press—whether here or elsewhere, from which, perhaps, no other member can escape; for I believe no one of the several tariff bills before the House during the last session was so fortunate as to receive his support—neither that which was reported by the Committee of Ways and Means, by my honorable friend from Ohio [Mr. CAMPBELL], not now in the House, nor that other bill, reported by my honorable friend from Virginia [Mr. LETCHER], who is here upon the other side of the House; nor that third bill, which was passed, and which corresponded with neither of the first bills in its general provisions, but which did correspond with both of those bills in that one provision, in which Lawrence, Stone & Co. were concerned, relative to the duty upon wool, which bill originated neither in any committee in this House, nor with any member of this House, but with a joint committee of conference of the two Houses as the result of their consultation in the last hours of the session, and was passed by this House and the Senate without the opportunity of deliberate discussion in either House. But in all three of these bills, Mr. Speaker, the provision relative to the removal of the duty on wool was more or less in accordance with the views of the gentlemen who are to be the subjects of this investigation. The bill adopted by the House was one which came from the committee of conference, and I have thought it proper, in view of the statements of newspapers, which, under other circumstances, I

would never have condescended for an instant to notice, to show how, by suppressing a part of the truth, they can commit as much a libel as if they had affirmatively imputed corruption; for, sir, we have had the paper of the Government here publishing the votes of gentlemen who voted for the bill which passed the House, conveying the insolent and false innuendo, that among them were to be found the men who received the money of Lawrence, Stone & Co., when bills with analogous provisions, equally favorable to the interest of the parties who are supposed to be tempters and betrayers of the honor of the House, emanating from and voted for by other members of the House, are passed over in silence.

But, sir, there is no suggestion in that paper that can throw a suspicion upon any member of this House demanding investigation. Now, sir, there is no man who holds the comments of the political press of the country in more utter contempt than I do. I stand in terror of no press, nor any combination of them. I hold their shameless libels in such utter contempt that, though they should point at me even personally their imputations, I should take no notice of them except to carry them before a grand jury, on an indictment for the libel which they may have promulgated. Sir, when charges are made simply through the newspaper press, I do not hold it worthy the dignity of this House to make them the ground of an investigation. I hold that my reputation, and the reputation of every member of this House, counting myself the lowest and humblest, is more than enough to look in the face the whole combined press of the country. Sir, there is no press which I recognize anywhere within the limits of the United States, whose unsupported charge within its editorial columns can even put me upon my defense.

But, sir, there is a different case now presented to this House—one which, perhaps, demands the investigation of the House. There is a statement from gentlemen known in the country, of responsible character, who have investigated the books of one of the merchant princes of this country, that these books show \$87,000 to have been used for the purpose of procuring the passage of the last tariff act. That statement, made over responsible names, is the foundation for the application which has been made by the gentleman from Ohio for an investigation.

It is true, Mr. Speaker, that the statement does not say how the money was employed. It does not include the presumption that a jurist sitting on a case would be bound to make a case from; because there are thousands of proper and legitimate modes in which money may be used to secure the passage of measures through Congress. It may be employed to pay the traveling expenses of agents. It may be employed to pay for publications. It may be employed in arguments honorably presented before committees. It may be employed in the way which this House refused, at the last session of Congress, to forbid, and which, therefore, is not illegal; for the last House refused, by a large vote, to pass an eminently honest and necessary measure, which you, Mr. Speaker, had the honor to propose, and which that House has the responsibility of defeating—a bill which made it criminal for any man employed for pay as an agent for any measure, public or private, before Congress, to approach any member upon the subject without first notifying such member that he was a paid agent. But, sir, this House having refused to adopt that wise, conservative measure, this also remains a legal mode of procuring legislation, and the \$87,000 may have been employed in that way. The agents employed may have

whispered into the ears of members suggestions under the guise of disinterested advice. It may be that this money may have been employed in some one of these legal though dangerous modes, without attaching dishonor to any member of the House.

But let the investigation come. And, sir, if it should be found again that peculiar influence has done more than was shown to be the general mode of its operation in the committee on which you were at the last Congress; if it should be found to have done anything more than to have gone into the hands of agents, and those who lyingly boasted their influence over members they dared not approach, and thus got up a reputation in the country of the corruption of Congress; if it should appear that any money has touched the palm of any member, then let him die the death of character.

But the point to which I chiefly rose is the shape of the resolutions of the honorable member from Ohio. He means, doubtless, that this investigation shall be effectual; but his resolutions prevent the possibility of the accomplishment of that result. Why, sir, the gentleman has hampered the great inquest of the country that will be charged to perform a lustration for the purity of this great central seat of its sovereignty with many of the forms and technicalities and delays of the ordinary judicial process of the country. Sir, I would have them saved that. I want it to be a free investigation; I want to have no technical difficulties interposed; I want to have no difficulties interposed which consume the time, weary the patience, prevent the judgment of the House, and fritter it away in minute detail of order and precedent. I, sir, am for adopting the precedent and the wise precedent that this House set at the last session, which accomplished results that every man here ought to be grateful for; which instituted an inquiry which oppressed no man's rights, which hurt no man's character unjustly, which dealt with men tenderly and carefully, which brought the guilty to punishment, and drove them to confess their guilt, by resigning their seats in the face of the investigation, the results of which were before the House; and touching the other gentleman, who was not condemned, it shows that investigation fairly presented the merits of the case, that the House dealt as it ought to deal where there is a doubt about the evidence, and gave the party the benefit of the doubt, and let him go free, untarnished. Sir, in behalf of the committee that made that investigation, and in behalf of the House that cast the votes which attained those results, I present my protest against the virtual condemnation which this House is called on to pass upon their proceedings, as well as their results, by the adoption of the complicated machinery of technicality which is sought now to be interposed; not that the gentleman has that purpose, but which must tend directly to trip up the steps of blind justice, as it is attempting to fumble its way in the dark, to the discovery of the fountains of corruption.

Mr. Speaker, one other observation and I have done. The honorable gentleman's form of proceedings, he says, better protects the character of individuals charged than that adopted at the last Congress. I say no, sir. It leaves it open to a thousand suspicions that no man can ever correct. In that last committee, where witnesses were summoned before them, every member of it had the counsel of the House, and the counsel of the man who was mentioned, and earnestly and honestly probed every witness as to every statement and every fact, rigidly and carefully confining themselves more than they were bound to do within the technical rules of regular evidence; and when the evidence was taken, it was not spread before the country until the

party implicated had been notified, until he had appeared before that committee, until he had had the opportunity of calling his own additional witnesses; until he had an opportunity of recalling the witnesses which the committee had already examined, and of reexamining those witnesses, and that with an advantage that no criminal before any tribunal has ever received; for, sir, we know that the plan which the gentleman wishes to pursue is that of the grand jury, which investigates in secret, keeps no record of the evidence, lays the indictment upon the table of the court, and calls upon the defendant to plead to it. Then the suggestions of the grand jury are whispered into the ear of the prosecuting attorney, and these form the blank unwritten brief for his guidance in the course of the prosecution. They do not hear the sworn testimony before the grand jury; nor have the opportunity to contradict a witness, nor the opportunity of testing the accuracy of the witness's memory; nor the opportunity of bringing into collision his memory at the first examination with his memory of the subsequent examination; nor the opportunity of exposing him to the inevitable contradictions of a false story. I say, sir, that the course pursued by the committee was wise, and threw more guards round character than the methods of the ordinary procedure of the law.

Mr. Speaker, one other word. In regard to the investigating committee, which is to play the part of the grand jury in the scheme proposed by my honorable friend from Ohio [Mr. STANTON], what is to become of their record? Is that to remain in their breasts, and are they to be allowed to say, on evidence that the country is never to see, that Mr. A B has been guilty of being bribed, and Mr. C D has received money? And, on the statement of the gentleman appointed by this House, is that to go before the country, and then, because another committee shall come to a different conclusion, it may be on different evidence, without anything to guide them in going over the same evidence which left the impression upon the first committee, is that man's character to go languishing to a dishonorable grave? Or is there any mode of avoiding that result? Sir, the only course is, that the evidence shall be taken; when taken, that it shall be submitted to the party implicated, who shall have an opportunity of controverting it by new evidence, and of bringing his own evidence; to reexamine the witnesses already examined, before anything sees the light; before it is even hinted that any man's character is suspected; before the mendacious press shall set its worms to eat it, as if it were already dead and rotten. It is requisite that the most delicate of all things, human character, shall be protected; and while I am for investigation, and while I fear no investigation, either for myself or others in this House, I wish it done, so that the man who is clear shall come forth clear; that the stain shall not rest upon the character that every man ought to bring into this House clean, and which every man ought to carry out with him clean; and, in the shape in which the honorable gentleman moves his investigation, it leaves a man who is charged where every man is left who has had a bill of indictment found against him by the grand jury; aye, sir, and worse, for the law still presumes he is innocent. Nobody knows upon what evidence the indictment is found. Only that against the prisoner is considered by the grand jury. Here it is virtually the judgment of his peers saying that they, after investigating all the evidence on the subject they could find for and against him, have been satisfied that there ought to be inquiry; and there is no mode of disproving the accuracy of their judgment. The same wit-

nesses are not called, the same questions may not be propounded, the same course of investigation may not be pursued; it may appear that the same persons who were examined may have given one statement before the first investigating committee and another before the subsequent one. Their evidence will not be published; yet it is the sworn foundation upon which the investigation has to proceed; and when the witnesses come face to face with the party accused, they may deny it.

Mr. STANTON. The gentleman from Maryland is proceeding upon an entire misapprehension of what is contemplated by my resolutions. I propose, at the suggestion of some friends, to modify the resolutions by inserting in them a provision that the committee shall report the facts if they find any one guilty. But the point to which I wish to call the attention of the gentleman from Maryland is this: I do not propose that no record shall be kept of the testimony given before the committee first appointed. All I propose is that the testimony taken by that committee shall not be used against the party upon his trial before this House, because he had not been present when it was taken. But I do propose that this committee shall keep a full record of all the testimony taken before it, and whenever occasion requires it—if the reputation of the party, or the justification of the committee requires it, or if there is any demand in any quarter for the facts upon which the committee act in either charging or discharging the party—that that testimony shall be exhibited to the public.

Mr. DAVIS, of Maryland. The gentleman takes away from the scheme which he proposes everything which is of advantage, and leaves it cumbered still with the difficulties of a double process. The course pursued by the committee of investigation of the last Congress was to take the evidence, and to have it written down and submitted to the party before the world knew anything about it. The gentleman either does or does not propose that the evidence shall be submitted to the party accused, before the world knows anything about it. If he does not, then the charge comes before the world before the facts and the evidence upon which it is based. And when he says the evidence should not be used against the party, because not taken in the presence of the person charged, I beg to call his attention to the fact that the evidence taken by the committee of investigation of the last Congress was not used, excepting by the assent of the party charged, after he had seen the case already made against him, with the option and the time to call witnesses. The member's own preference was that the evidence should be taken and used against him, and if he preferred that course, it is fair and reasonable that it should be so.

I submit, therefore, that the course proposed by the gentleman from Ohio, accomplishes no purpose, but necessitates a double process; when the party implicated might prefer not to take that course, but, to save time, might prefer to submit the case, and the gentleman in the last Congress did, upon the evidence taken in writing, in the first instance.

Now, in reference to the analogy quoted here, and quoted in the last Congress, about the same body of gentlemen occupying the double position of grand and petit jury, with all respect to my honorable friend, he is not accurate in his legal analogies. The committee was neither a grand jury nor a petit jury. We put no man upon trial. This House put them upon trial. We were merely commissioners of the House to take evidence for the House and lay it before them, to see whether the House would put the parties upon trial upon that evidence. When the committee came before the House, the House, if it

had seen fit not to put the parties upon trial, would have laid the resolutions reported by the committee upon the table. When the House ordered the resolutions to be considered, the House then put them upon their trial upon the evidence already taken, with the parties before the committee. When the gentleman from Ohio speaks about the same body of gentlemen holding the position of grand and petit jury, my honorable friend is still more inaccurate; because it assumes that the committee of the last Congress found some facts conclusively against the party charged. You know, Mr. Speaker, and gentlemen of the House know, and the report shows upon its face that the committee did not claim any power of making even a *prima facie* case; that they executed merely the order of the House, and reported what the House ought to do. It is the shape every measure has to assume before the House can accept it for consideration, or reject it without consideration. It is the ordinary form every bill has to assume before it is laid upon your table. It is the shaping of the measure upon which the House is to determine, when first brought before them, whether they will or will not consider it; and it is in determining whether the House will or will not consider it, that the House determines the great point whether the party shall or shall not be placed upon trial. Before that time the committee has acted as the hand of the House to write the evidence, in order that the House may be enlightened upon two questions at the same time; first, whether they will try; and, second, when they have determined to try, what judgment they will render.

I therefore, as the shortest way to accomplish the purpose intended; as the best way to shield human character; as the best way to facilitate the progress of justice; as the shortest way to sweep away all the stumbling-blocks and difficulties which the progress of the investigation at the hurried close of the session may throw in the way of what we may then wish to do, move to amend the resolutions by striking out the last two resolutions, and to change the first resolution by striking out all after the word "report," and inserting:

All the evidence, and summon before it such persons as it may see fit, and shall report to this House what, in their opinion, this House should do in the premises.

Mr. KUNKEL, of Pennsylvania. I have a very few words to say. I know that this investigation—as all investigations of the kind do—will involve time, trouble, and expense; but I am anxious to have this investigation. The charges set forth in the preamble are made quite extensively over this whole Union; and if there were nothing more than these charges in the newspapers, circulated so extensively as these have been, I would be still for the investigation.

Sir, I can not agree with the gentleman from Maryland in the opinion he expressed as to the newspaper press of the country. I believe that it has a function to serve in a free Government, and that the newspaper press of this country has not yet ceased to serve that function. I believe, sir, you may put corrupt men in this House; you may put corrupt men in the Senate; corruption may crawl and creep along all the avenues to this Capitol; and yet, with a free, unshackled, faithful press, the interests, rights, and liberties of the people will be preserved. But, sir, this charge is not only made upon the authority of the newspaper press, but, as I understand it, it appears in the report made by a committee of the stockholders of this Middlesex Manufacturing Company to the stockholders themselves. I know nothing about Lawrence, Stone & Co. The gentleman from Massachusetts says they are among the merchant princes of New England. But this I do know, that these

merchant princes and manufacturing princes of New England struck hands with the free-trade interest in the last Congress, and prostrated the industry of my State. I know that the faith of the manufacturing interests of New England, in relation to the other industrial interests of the country, as exhibited last winter, was Punic. Gentlemen get up here, and tell us of the high character of Lawrence, Stone & Co. I ask, are men to be eulogized in the American Congress whose books exhibit—what? The expenditure of \$87,000 to influence and control the legislation of this country.

Mr. BURLINGAME. The gentleman from Pennsylvania is laboring under a misapprehension as to what I said. I did not for a moment attempt to shield the name of the senior member of the firm of Lawrence, Stone & Co. I simply said, touching that name, that I would not deepen the shadow which rested on it. I said that the name—because of the honored dead who bore it and because of the noble and generous living who bear it—had stood, and still stands to-day, as the synonym of mercantile integrity and honor. I do not wish to shield the senior member of that firm from investigation at all. I would shield no man. But when misfortune comes upon a man or upon a name, I am not the person to stand by, or to sit by, without saying whatever I can in favor of that name; without bringing forward what I can that is in its honor. If the gentleman deems that a eulogy on the character of the senior member of that firm, then let him make the most of it. I do not consider it a eulogy.

Mr. KUNKEL, of Pennsylvania. Well, Mr. Speaker, I understood the gentleman to say at first, just what he says now; that he would not deepen the cloud which rests on that house; but I understood him to go into a very considerable eulogy on the character of Lawrence, Stone & Co. If he retracts it all, I am perfectly satisfied. If not, I am satisfied anyhow.

Mr. BURLINGAME. I retract nothing, sir; I never said it.

Mr. KUNKEL, of Pennsylvania. Very well; if the gentleman avers that he did not pronounce anything like a eulogy, I must be mistaken; but other gentlemen heard him as I did. However, it is of no account.

It appears, on the books of these merchant princes of New England, that \$87,000 were expended to influence legislation. The gentleman from Maryland says that it does not appear but this sum may have been spent in some *appropriate* way. In what *appropriate* way could that enormous sum be expended in this country to influence legislation in this House? I can not see. I do not know. Year after year we are constantly assailed with the cry of corruption in regard to the tariff policy. Over and over again we hear men, who have held position in this country, charged with combining together, for mercenary considerations, to affect that policy, to refund duties on railroad iron, to have a revision of the tariff; and thus that great interest in my State is kept in perpetual anxiety and suspense.

These charges have been made over and over again. I heard them here at the close of the last Congress, when the act of last year was pending. I heard them when I went home. They come now in a more authoritative shape, and I am for investigation. I do not know whether they affect any man in this House, or whom they are to affect—nor do I care. They are made; and the legislation of last winter, pressed upon this House by New England merchant princes, and passed by New England votes, was a sacrifice of the industrial interests of my State, and, with other causes, helped to paralyze the arm of honest and willing labor in that State, so that at this day, and at this very hour,

were it not for the interposition of a benevolent Providence in this mild and genial winter, there would be distress and starvation in all her borders.

Now, in this state of things, with these charges made and reiterated, and coming before the House in this way, I want this investigation. I do not care in what shape it is had—whether we adopt the course taken last winter, and which was doubtless entirely satisfactory to the public mind; or whether we adopt the resolutions as offered by the gentleman from Ohio, which I prefer. I want the investigation in the broadest, fullest shape possible. Let all the facts connected with the matter be given to the country. Let it be known if there be a single member in this House influenced by corrupt motives. Let the fact be ascertained whether New England manufacturers operate in this way. If they do, they will be less entitled to the regard of American Representatives than they have been heretofore supposed to be.

Mr. HARRIS, of Illinois, obtained the floor.

Mr. STANTON. Will the gentleman yield to me to modify the resolution?

Mr. HARRIS, of Illinois. I yield for that purpose.

Mr. STANTON. I desire to modify the first resolution so as to add to the powers of the committee by adding, “and also to report all the facts found by the committee,” so that the resolution would read:

Resolved, That a committee of five be appointed by the Speaker to investigate said charge, and to inquire whether any member or officer of this House received any part of said sum, and the facts found by the committee; and that said committee shall have power to send for persons and papers.

Mr. HOUSTON. With the permission of the gentleman from Illinois, I would say to the gentleman from Ohio, that I do not think his modification covers the point he seeks to attain. The original resolution confines the investigation to those who may be members or officers of this House. Now what I suppose the gentleman endeavors to accomplish, and what I think ought to be accomplished is, that the examination of the committee should not be confined to the officers and members of the present House, but that the committee should examine the entire subject and report all the evidence, whether it implicated men now in the House or out of the House.

Mr. STANTON. I suppose that my resolution covers that ground.

Mr. HOUSTON. The gentleman is mistaken. It does not. It is confined in its express terms to members and officers of this House.

Mr. STANTON. It confines only the power to present charges to the members and officers of the present House; but it also directs the committee to report what facts they may find.

The resolution as modified was again read.

Mr. HOUSTON. The gentleman from Ohio will see that my point is well taken. The resolution confines the *inquiry* to members and officers of this House; so that it may be that members and officers of the last House were implicated in this business of corruption—if corruption there was—and yet this resolution does not authorize the committee to look into their acts. And while I admit that we have no power to punish those who are not members of this House, yet I think we ought to bring the whole facts before the country by the investigation by this committee, and let the country deal with those implicated as public sentiment may require.

Mr. STANTON. If the gentleman from Alabama has any apprehensions as to the scope of the resolution, he will oblige me if he will pre-

pare what he thinks will meet his views, and I will accept the modification.

Mr. HARRIS, of Illinois. It is not my purpose, Mr. Speaker, to enter into a discussion of the merits of these resolutions. So far as personal considerations are concerned, they affect neither me nor those who voted with me. I think, however, from what has transpired since the investigation of the last session, and from what is being promulgated every day through the press of the country, it is due to the character of the House that some investigation should be had.

Mr. MORGAN. I want to know by what authority the gentleman says the facts of this investigation can not affect those who voted with him?

Mr. HARRIS, of Illinois. I will answer that, and also any other questions the gentleman may choose to ask. I have the record before me showing the votes of members upon the proposition at the last session of Congress for a modification of the tariff. There has been nothing which has transpired, or which has yet met my observation, that goes to show in what direction it may be alleged that this money has gone. But from what transpired at the last session, in the investigations which were then had, we have very little to fear from any investigations that may now be instituted. The respective characters of the two sides of the House were fully portrayed in the reports which were made on that occasion, and until this side of the House is assailed, it needs no defense; and any assault that it is proposed to make, is here most cordially defied.

There are some questions, however, connected with this matter, which may not inappropriately be considered. The House will very well recollect, and the Journals furnish proof to those who do not recollect, that there were resolutions reported at the last session, by a select committee, which implicated the character of a member of the House, and that person is now a member of the House. Fortunately, he is not upon this side of the House. And, sir, while it is proposed to go to Boston to investigate what has been done there, connected with the corrupt legislation of the House, it may be well enough for us to turn our eyes and see what is actually presented here in our midst—what we know by the record. In order to complete the purification of the House, and the expurgation of offensive members, and that the whole matter may be presented in its proper form, I send to the Chair an amendment, which I propose as an additional resolution. I move to add the following:

Whereas, at the last session of Congress, a select committee of this House reported the following resolutions, to wit:

“Resolved, That ORSAMUS B. MATTESON, a member of this House from the State of New York, did incite parties deeply interested in the passage of a joint resolution for construing the Des Moines grant, to have here and to use a large sum of money and other valuable considerations corruptly, for the purpose of procuring the passage of said joint resolution through this House.

“Resolved, That ORSAMUS B. MATTESON, in declaring that a large number of the members of this House had associated themselves together and pledged themselves, each to the other, not to vote for any law or resolution granting money or lands unless they were paid for it, has falsely and willfully assailed and defamed the character of the House, and has proved himself unworthy to be a member thereof.

“Resolved, That ORSAMUS B. MATTESON, a member of this House from the State of New York, be, and is hereby, expelled therefrom.”

And whereas the first of said resolutions was adopted by the House of Representatives on the 27th of February last, by a vote of 145 yeas to 17 nays; and the said second resolution was adopted by the House on the same day without a division; and whereas said MATTESON had, prior to any vote being taken on the last resolution, resigned his seat in the House, and thus avoided the effect of the same; and whereas the said MATTESON is a member of this House, with the imputations

conveyed by the passage of the first two of the foregoing resolutions still upon him, and without having been subsequently indorsed by his constituents; therefore,

Resolved, That said committee take the aforesaid state of facts into consideration and report to this House, if any, and if so, what action may be necessary and proper to maintain and vindicate the character of this House.

Mr. STANTON. I rise to a question of order. I submit that the amendment is not germane to the resolutions under consideration. It relates to an entirely different subject-matter—to an entirely distinct inquiry. I do not want the resolutions which I have presented to the House burdened by the addition of any such proposition.

Mr. HARRIS, of Illinois. The chair will decide the question of order. I am perfectly willing, however, if the gentleman objects to it, that the matter shall stand as the gentleman has offered it. I do not want my proposition yoked to his unless it is strictly in order. I do not wish to embarrass his resolutions; and if there is any objection upon that side of the House, I withdraw my amendment.

The SPEAKER. The Chair is of the opinion that the amendment is not in order. It is not germane to the original proposition.

Mr. HARRIS, of Illinois. Very well. Then I will present it as an independent proposition whenever I shall have an opportunity.

Mr. STEPHENS, of Georgia. I move the previous question on the resolutions.

Mr. GROW. I ask the gentleman to withdraw the demand for the previous question a moment; I will renew it.

Mr. STEPHENS, of Georgia. I can not do so. I want to get to the Speaker's table for the purpose of taking up the joint resolution affecting certain naval officers, for if we do not pass it to-day, we need not pass it at all.

Mr. GROW. I do not propose to occupy the time of the House for more than five minutes.

Mr. STEPHENS, of Georgia. I can not withdraw the demand. I insist on it.

Mr. STANTON. I desire the attention of the gentleman from Georgia. As the mover of the resolutions, I desire five minutes to reply to remarks which have been made by the gentleman from Maryland, and I will then move the previous question.

Mr. STEPHENS, of Georgia. I have just now been informed, that, from action taken by the Senate, yesterday, it is not indispensably necessary for us to act upon the joint resolution relative to these naval officers. I will therefore withdraw the demand for the previous question.

Mr. STANTON obtained the floor.

Mr. GROW. I rise to a question of order. The gentleman from Ohio has already spoken on this question, and I insist that he can not speak again, until other members, who have not spoken, have had an opportunity to do so.

Mr. STANTON. The resolutions have been modified, and there are amendments pending upon which I have not spoken.

The SPEAKER. The gentleman is right, and the Chair overrules the point of order.

Mr. STANTON. I desire to call the attention of the House to the amendment of the gentleman from Maryland [Mr. DAVIS]. I regret that the gentleman from Illinois should have deemed it proper, upon this occasion, to allude to parties in this House, and the manner in which they may be affected by this or any other investigation. My position in regard to a question of that kind is, that it is the duty of every family

and every political party to see to its own household; and if there be a corrupt man upon this side of the House, I would vote to expel him sooner than I would to expel a man of the other side, because it is indispensable to the maintenance of any political party that its integrity should be preserved, and that it shall command the confidence of the country. Now, the gentlemen upon the other side have some family affairs that they have not disposed of, in relation to the sale of Fort Snelling and other matters. Let them get along with that, and then they can talk to us about their character.

I regret exceedingly that anything of a party character should have been brought into this discussion. But when the gentleman said that that side of the House could not be charged, there was another idea which occurred to me. Why, sir, the cardinal object of these Massachusetts manufacturers was to get rid of the duty on wool, and every gentleman on the other side voted to take off the duty on wool under 20 cents per pound. The vote to reduce the duty on wool was a party vote. They, then, are the very men who are implicated in this charge.

Mr. Speaker, I desire now to call the attention of the House for a few moments to the amendment of the gentleman from Maryland. It is claimed that inasmuch as a committee of the last House performed the functions of inquirers and triers of parties charged with corruption, it is therefore a safe rule, a safe practice. It is said that no injustice was done; that these parties had great privileges and facilities extended to them, for the purpose of presenting their defense before the committee. I think, sir, that that is true. I think that it is possible that no injustice was done to any of the parties charged by that committee. I think that they had all fairness extended to them that it was within the power of the committee to extend, without a total defeat of the purposes of the investigation. But the proposition I desire to make is, that gentlemen in this House shall not depend for their rights upon the discretion of a few gentlemen who may happen to compose an investigating committee.

Mr. HARRIS, of Illinois. I wish to ask the gentleman a question before he takes his seat. He alludes to a family quarrel upon this side of the House in reference to the sale of Fort Snelling. I want to know whether he means to intimate that any member here has any connection, immediate or remote, with that sale?

Mr. STANTON. No, no, I do not; but I mean that the administration which the gentleman helped to bring into power and now supports, made the sale, and a member on that side of the House moved for the investigation, and it seems to be a family affair.

Mr. Speaker, a committee of this House, it is said, in a single instance, performed impartially, without any injustice to the parties charged, the functions of grand and petit jurors.

Now, the inquiry I desire to present (and I regard it as exceedingly important) is, whether the House regard it as right and just and safe for the rights and honor of members to be intrusted to the discretion of five gentlemen selected by the Speaker? It is said that copies of the testimony were furnished to the parties charged. But, if that was so, was it not within the discretion of the committee to withhold them? There was no obligation on the committee to present copies of the testimony. I desire, with the assistance of the House, to set a precedent which, in times of high party excitement, will prevent a prejudiced or corrupt Speaker from placing the rights or the honor of members of this House in the power of a packed committee, with power to inquire, investigate and condemn in secret. I want some security

against the abuse of that unlimited and boundless discretion which was conferred upon the committee of the last House, and which it is now proposed to confer upon this committee.

There is another fact, worthy of consideration. The committee which investigated the charges presented against members of this House, at the last session, accused one of the four persons whose cases were investigated, with an offense for which they presented a resolution of expulsion; and every member of the committee, I believe, voted for that resolution, when it was rejected in the House by a vote of 119 to 42. The House differed with that committee. Such a committee, acting in the capacity of grand jurors, who enter into the spirit of the prosecution, feel that it is their function and their business to purge the body and to expel unworthy members; and they loose sight, to a very considerable extent, of the rights and privileges of individual members.

I am at a loss to comprehend how the resolutions I submitted complicate the proceedings of the House. It is said by the gentleman from Maryland, that perhaps, when a charge is presented against a member, he will not desire to have another committee. Very well. There is no difficulty in the world about a party waiving rights which he is entitled to. I take it that if a gentleman is charged here with an offense, and does not desire an investigation, he has nothing to do but to say so; let him plead guilty or let him elect another mode of trial; let him agree to go before the House upon the testimony reported by the first committee, and these resolutions, providing for his benefit and protection, will not stand in his way.

But there is another difficulty in relation to the testimony to be taken before the first committee. The first committee should take down the testimony in writing, and it should be kept in its possession. It should not be reported, nor made public without the consent of the party charged, until the witnesses have been reexamined in his presence, subject to this cross-examination, and such other testimony has been offered as he chooses to submit in his defense. The testimony should be reduced to writing, and preserved for the purpose of aiding the prosecution before the second committee.

So far as I am personally concerned, Mr. Speaker, if the amendment of the gentleman from Maryland prevails, I shall certainly feel it my duty to transfer this investigation to him. I will not, as a member of this House, undertake to investigate charges against a member, and report to this House testimony taken in his absence, upon which this House is to act in determining the merits of his case. There are two reasons for it: in the first place, I want, when the testimony is taken before the committee, not to be under the necessity of furnishing to the party charged a copy of the evidence during the progress of the investigation. Their right would seem to require that they should have a copy; and yet the furnishing of a copy may be the means of counteracting the object of the examination, and may set them to work to use instrumentalities to prevent further investigation, and prevent the corroborating of testimony already taken.

I do not desire to be embarrassed with an investigation prosecuted in such form as to prevent me from making a full development of the whole case. I do not desire it, acting in that capacity, and charged mainly with the duty of inquiring into abuses, and not of trying anybody. My object would be to hunt up what abuses and what corruptions have been practiced by any member of this House; and therefore I should not feel bound to guard the rights of the party charged, to

the same extent that I would if I were taking the testimony upon which the party was to be tried.

The proposition of the gentleman from Maryland [Mr. DAVIS] is seeking to gather to a single committee the united functions of a petit and a grand jury; and commits the honor, the rights, and the privileges of the members of this House to the hands of a body constituted at the pleasure of the Speaker of the House. With all due deference to, and expressing the utmost confidence in, the presiding officer of this House, I am not willing to set a precedent which, in future time, may work great prejudice and evil to the members of this House.

I therefore trust that the House, if they intend to have an investigation at all, will suffer it to proceed in the manner indicated in the resolutions which I have offered; and that the committee raised shall be a mere committee to inquire, and not to take the testimony upon which any member of this House shall be charged with bribery or corruption.

Mr. GROW obtained the floor.

Mr. PURVIANCE. I ask my colleague to yield me the floor for one moment. I think I have a resolution which will meet the approbation of the gentleman from Ohio.

Mr. GROW. I will yield to my colleague if thereby I do not lose my right to the floor.

Mr. PURVIANCE. I ask to have my resolution read; and I hope the gentleman from Ohio will accept it as a modification of his own.

The resolution was read, as follows:

Whereas a committee appointed to investigate the affairs of the company of Lawrence, Stone & Co., of Massachusetts, amongst other things report: That \$87,000, as appears from papers in possession of said company, were paid to secure the passage, at the last session of Congress, of the law reducing the duty on foreign imports; and whereas, said report has found its way into the public journals, accompanied by severe reflections upon the members of the Thirty-fourth Congress, some of whom being members of the present, and therefore exposed to suspicions which require immediate investigation: Therefore,

Resolved, That a committee of five members be appointed to inquire into and investigate said charge, and if found to be true, to ascertain whether any member, officer, or employé of the then or present House were, in any way, connected with the receipt or disbursement of said sum of money, or any part thereof, and if so, the names of said parties, and the facts elicited, of which the parties implicated shall be notified by the committee, and shall have an opportunity of appearing before the same, there to be heard fully—the result of which to be communicated to the House for its action.

Mr. STANTON. If the gentleman will omit the last part of it, and leave it as a substitute for my first resolution, I am willing to adopt it. But I am not willing that the committee shall take and report the evidence in the case, upon which the party is to be tried by the House.

Mr. GROW. On the introduction of this resolution, it was not my intention to take part in this discussion. I shall trespass now but a few moments upon the attention of the House, and should have been content to give my vote for the resolution in silence but for the remarks of the gentleman from Maryland [Mr. DAVIS] and those that fell from the lips of the gentleman from Illinois [Mr. HARRIS], who seems to-day to be imitating the example of the gentleman from New York [Mr. HASKIN] the other day, who paid a high compliment to the gentleman from Massachusetts [Mr. THAYER] by admitting in his mode of reply that he was so completely impaled that there was no way for him to extricate himself except by a wholesale charge upon a great party in this country. Instead of meeting the remarks of the gentleman from Massachusetts, he chose to make a charge upon the integrity of one of the great parties of this country, and upon every member of

it upon this floor. The gentleman from Illinois [Mr. HARRIS] to-day imitates his example, and instead of replying to the question of the gentleman from New York [Mr. MORGAN] he attempts to cast suspicion upon the integrity of all the members of this side of the House, and like the man of old who stood up and thanked God that he was not like other men, he wraps around himself his cloak of self-righteousness, and hurls anathemas upon the members upon this side of the Hall.

Sir, the attempt to make the course of proceedings of the investigating committee of the last Congress a precedent to be followed hereafter, is an invasion of the privileges guaranteed by the Constitution to every citizen. Why, sir, should the character of members of Congress be placed at the mercy of the abandoned and debased more than that of others? I would throw around them, as I would throw around the humblest criminal in the courts, the safeguard which the Constitution of the country gives to personal liberty and to personal character. That Constitution permits you to try no man charged with the least offense in a court of justice, without confronting him with his accuser. The committee of the last Congress brought before them profligates from the streets to blacken the character of members of this House, and allowed them, in secret, to give evidence, solitary and alone, to disgrace the accused forever.

Mr. RITCHIE. I rise to a question of order. It is not in order to discuss the action of the committee of the last Congress, the matter not being properly before the House.

Mr. GROW. It was brought before the House by the remarks of the gentleman from Maryland [Mr. DAVIS].

Mr. RITCHIE. Well, the gentleman from Maryland was out of order.

The SPEAKER. The Chair dislikes very much to have that question of order raised, inasmuch as the occupant of the chair was a member of that committee.

Mr. RITCHIE. The matter was fully discussed last session, and the action of the House had upon it.

Mr. GROW. The gentleman [Mr. RITCHIE] was a member of that committee, and if he is unwilling to have its proceedings investigated——

Mr. RITCHIE. If the gentleman [Mr. GROW] moves for a committee to investigate the conduct of that committee, I am perfectly willing it should be done; but I do not wish to have a controversy now on a subject which was fully discussed before, and where the whole matter was investigated from beginning to end.

The SPEAKER. The Chair hopes that the gentleman from Pennsylvania [Mr. GROW] will confine his remarks to the resolution before the House.

Mr. GROW. I stand here, then, to protest against this House raising a committee, at any time, to investigate the conduct of any of its members charged with I care not how small an offense affecting his integrity, without that member being called to confront the witnesses against him. I ask that his character shall not be, because he is a member of Congress, held less sacred than that of a petty thief in courts of justice. That was done in the last Congress, and will be again, if the precedent referred to by the gentleman from Maryland [Mr. DAVIS] becomes the settled practice. Witnesses collected from your streets, with malignity in their hearts, and who can gloat over the ruin of those on whom they desire to avenge their supposed wrongs, will, in the dark, give testimony which, with the eye of their victim flashing full in their face, they dare not give; their tongue would cleave

to the roof of their mouth, and they can not utter the falsehood. Why have the sages of the law built around every man that great bulwark of liberty and personal rights, by requiring his accuser to be confronted with him? It is because such is human nature that guilt and wrong quails before the indignant frown of innocence, truth, and justice. Therefore the perjured witness on the stand confronting him whom he accuses, face to face, does not tell the tale of falsehood that he would utter in the dark.

Now, I am in favor of the resolutions offered by the gentleman from Ohio; and I trust the House will not regard the innovation of the investigating committee of last Congress as affording a precedent to be followed; for never, in the history of the Government, till then, did a committee, appointed to investigate the conduct of members, sit with closed doors, and deprive the member implicated of the right to confront the witnesses face to face. "Oh!" say gentlemen, "no harm can come of it; no man can be hurt by it; is he not to be tried by the House?" If you take the proceedings in last Congress as a precedent, he is not to be tried at all. The House gave no trial to the members impeached. They were tried on the testimony taken in the star chamber—in the dark—and on that alone, when the examination in chief of the witnesses was in the absence of the accused. Your grand juries have no record of the testimony taken before them to blast the character of the victim accused. You bring him into court not to try him on the testimony taken before the grand jury, but on testimony of witnesses face to face with the accused. The men who are to find the verdict that is to affect the character of the accused, know nothing of what took place in the grand jury room. There is, therefore, no similarity between this course of proceeding and that of a grand jury, and especially as this grand jury can do as it did last Congress, suppress a portion of the testimony of witnesses, and then come in and ask the House to pass judgment on these *ex parte* statements.

I sought the floor, sir, not for the purpose of making a speech, but merely to enter my protest against any precedent being established that would deprive a member of Congress of the same protection to liberty and character which the wisest and sagest of your lawmakers from the time that civilized society began, to this hour, have thrown around criminals in courts of justice. Why should a man, because he chances to occupy a seat on this floor, be left to the mercy of the profligates who surround these Halls, who may go before committees, in the absence of the member implicated, and give testimony to blacken his character and affix disgrace to it for all time?

Mr. LETCHER obtained the floor.

Mr. HARRIS, of Illinois. I ask the gentleman from Virginia to yield to me, that I may reply to a remark of the gentleman from Pennsylvania.

Mr. LETCHER yielded the floor.

Mr. HARRIS, of Illinois. With the consent of the gentleman from Virginia, for one moment, I wish to reply to the remarks of the gentleman from Pennsylvania [Mr. GROW], who has just taken his seat. It seems very hard to satisfy that gentleman as to the manner of the investigation. It is very difficult to suit him as to the form of the resolution. About that I am entirely indifferent, provided the facts are got at.

But the gentleman said that we on this side, or perhaps myself, were disposed to be like the man of old, who stood afar off, and thanked God

that he was not as other men. If he means to say that myself, or those who act with me, do offer up such thanks as that we are not as *some* other men, then he is correct. And if the gentleman will also imitate the example of him who was put in contradistinction to the one who stood afar off, he may with some sort of sincerity exclaim, "God be merciful to me, a sinner!" I have no doubt that his exclamation would meet a hearty amen from every gentleman on this floor.

Mr. RITCHIE. Will the gentleman from Virginia allow me to say a word now?

Mr. LETCHER. Yes; I yield to the gentleman.

Mr. RITCHIE. My colleague [Mr. GROW] seems to intimate that the members inculpated by the investigating committee of the last Congress had no opportunity afforded them of knowing the testimony of the witnesses till it was brought before the House. I wish merely to state that we furnished to all the members inculpated copies of the testimony against them, and invited them to come and reexamine the witnesses whose testimony had been furnished to them, and to produce witnesses of their own; and in two cases gentlemen did that.

Mr. GROW. That was after the testimony of the witnesses was taken, that he might cross-examine.

Mr. RITCHIE. Copies of the testimony were furnished in all cases, and an opportunity given to reexamine the witnesses, and to produce witnesses of their own.

Mr. GROW. Was it not twenty days after the time when the testimony was taken, that a copy of it was furnished to Mr. Gilbert?

Mr. RITCHIE. I do not recollect the time; but I think it was nothing like that length of time.

Mr. LETCHER. It seems to me somewhat remarkable, that while two investigating committees have been organized during the present session, my friend from Ohio [Mr. STANTON], and my friend from Pennsylvania [Mr. GROW], should have both remained silent. Why were they not roused up then to the necessity of protecting Congressional and official character? Why did they sit there in their seats while the resolution in reference to the late Clerk, and the resolution in reference to the Fort Snelling matter, were introduced into this House, without raising their voices against the enormity which they say was practiced at the last session, and which they seek to avoid being practiced at the present?

Mr. GROW. Will the gentleman permit me to answer him?

Mr. LETCHER. Yes, sir.

Mr. GROW. The resolution in reference to the sale of Fort Snelling involves no person by name, nor has it any reference to a member of the House, as I understand it.

Mr. LETCHER. Nor do these proceedings involve the name of any member of this House, or of the other; so that the gentleman's explanation does not meet the case, and he remains hampered by the same difficulty now as he was before he made it. So far as the resolution about the Clerk was concerned, a name was involved there. Why did not the gentleman rise then, and undertake to hamper the proceedings in reference to him, by this cry in behalf of Congressional and official character? Not one word about it was said then; but now, when this proposition is introduced, gentlemen rise here and tell us that it is a great outrage; that it is not to be tolerated; that parties ought not to be arraigned in secret, and then brought here to this House for final judgment.

Now, I am opposed to the shape in which the resolutions offered by my friend from Ohio have been got up.

Mr. STANTON. Will the gentleman allow me——

Mr. LETCHER. Wait till I state my objections.

Mr. STANTON. I was going to answer the gentleman's inquiry why I did not oppose these other resolutions.

Mr. LETCHER. Very well. I yield for that purpose.

Mr. STANTON. In the resolution in regard to the Clerk of the House, the party charged was named. The resolution in regard to the sale of Fort Snelling was not based on any imputation against any member of the House, or against the body at large. It was not supposed by any man to involve the character of the House, or of any member of the House. It was an inquiry into an act of one of the Executive Departments. We had no power to try, and could not pass censure or sentence on the parties supposed to have been guilty of misconduct in that matter.

Mr. LETCHER. Then the gentleman's explanation is, that he did not raise the question on the one because nobody was named, and that he did not raise it on the other because somebody was named. That is just the amount of his explanation. But I regretted to hear the gentleman from Ohio, who is usually so fair, who may be called upon to pass judgment in regard to this investigation about the Fort Snelling matter, undertake to declare in a breath that there was corruption in that matter, and that it attached to my party friends.

Mr. STANTON. The gentleman from Virginia is mistaken. I did not say that any person was implicated in the Fort Snelling matter.

Mr. LETCHER. Well, the gentleman said it was a family affair, growing out of these charges. Now, sir, let me say to that gentleman, that, so far at least as the officer of the Government supposed to be implicated by that proceeding is concerned, I have no doubt that he will demonstrate to this House, and demonstrate to the country at large, that an assault more unfounded never was made upon any public officer.

So much for the present. I want this investigation to proceed. Let the facts come before the country, and see how nearly my predictions will be verified by the results.

But, sir, that has nothing to do with the proposition before the House; or, at least, it ought to have nothing to do with it. We ought to have none of this crimination and recrimination about facts which have no tendency to throw any light upon the subject, or prepare the minds of members of the House for as deliberate action as we might otherwise have.

Mr. STANTON. I trust the gentleman from Virginia will do me the justice to say that none of the crimination came from me, or from this side of the House. It came from the gentleman's own party.

Mr. LETCHER. Well, sir, I thought there was some of it on both sides.

Mr. SMITH, of Illinois. Will the gentleman allow me for a moment?

Mr. LETCHER. I will, if the gentleman does not take too long.

Mr. SMITH, of Illinois. I introduced the resolution into this House to make inquiry into the circumstances of the sale of the Fort Snelling reservation. But, sir, I did not, and the resolution does not, cast any imputation upon any gentleman. I feel it, perhaps, due to myself to say that I know a good deal about that matter. I have never said, and I do not say now, that the Secretary of War did anything wrong in the matter. But I have felt from the knowledge I have upon the

subject that it is a case which requires investigation; that it is due to the Secretary of War, that it is due to the Administration, and that it is due to the Democratic party that an investigation should be had. I may have some feeling in the matter, and for that reason I declined to accept a place upon the committee. But I signified to the chairman of the committee that when they were organized, I would appear before them at any time they might designate, and tell my story. I think there was something wrong in relation to that sale. But, sir, I said, and I repeat, that I do not charge, by implication or otherwise, anything wrong on the Secretary of War. I say again that it is due to that officer, it is due to the Administration, and it is due to the country, that a rigid examination should be made in relation to that sale. For myself, as a civilian, I think it was all wrong, unwise, and imprudent to sell the buildings at Fort Snelling, and I have no doubt at all that this House will concur with me in that opinion when the facts and circumstances come before it. But I protest that it is not a legitimate deduction from the resolution that there is any fraud charged upon any one. That wrong has been done I have no doubt; but it may have been done as innocently as any transaction which ever took place in the country.

Mr. LETCHER resumed the floor.

The SPEAKER. The Chair desires to suggest to the gentleman from Virginia that rather too great latitude of debate has been indulged in upon the proposition before the House.

Mr. LETCHER. I should not have alluded to this Fort Snelling affair at all, but for the allusion of the gentleman from Ohio to it, as a family matter which I thought required a response.

The SPEAKER. The Chair desires the gentleman to confine his remarks to the subject before the House, and he will endeavor to hold other gentlemen who may address the House to the same rule.

Mr. LETCHER. That is what I intend to do. I was about remarking, when I was interrupted by the gentleman from Illinois, that I do not like the shape in which those resolutions are presented by my friend from Ohio. If I understand his resolutions correctly, he proposes, in the first place, to organize a committee who shall be charged with the duty of taking this testimony, and that they shall then report to the House after the testimony has been taken; that the matter shall then undergo a further investigation upon that testimony as a basis, and upon such additional testimony as may be brought forward.

Mr. STANTON. If the gentleman will allow me, I will say that my resolution does not contemplate that any of the testimony taken by this first committee be reported to the House, unless the party implicated claims it as a right.

Mr. LETCHER. Then, it strikes me that it is a very useless operation, if you are to raise a committee to take testimony, and that committee is not to report that testimony to the House unless the party acknowledges his guilt and presents himself here for judgment.

Now, sir, I prefer the mode of proceeding adopted at the last session of Congress. I think it is more simple, that it is more direct, and that it will be more likely to result in something than the plan proposed by the gentleman from Ohio, in the resolutions now under consideration. Let this committee be appointed, let them summon their witnesses, let them have before them the necessary papers, let them have all the records before them and report the facts to the House, with such resolutions as the testimony taken before them may call for. That seems to me to be the most simple mode.

But suppose you institute this grand-jury proceeding, and the parties come forward and demand a trial; are they to be brought before the bar of the House and formally arraigned? Are witnesses to be summoned and examined before the House, day after day, before you can come to any conclusion? It would seem that such is the purpose. It does seem to me that to adopt such a course, and arraign the parties before the House, would require months, if it did not consume the entire session, before you could bring the examination to a conclusion.

Mr. SHERMAN, of Ohio, addressed the Speaker.

Mr. LETCHER. I have not yielded the floor, but I will hear the gentleman.

Mr. SHERMAN, of Ohio. I only desired, supposing the gentleman was through, to get the floor to call for the previous question; but as an intimation was made by the gentleman from Illinois [Mr. HARRIS] that the tariff bill of the last Congress was the act of the Republican party, I will call the attention of the House to the vote on the passage of that act. Upon examination, I find that but thirty-six Republicans voted for it, and that ninety-eight of those who opposed the Republicans voted for it. Among those who voted against it I find but two Democrats, and seventy Republicans, myself among the number. I think, therefore, if we are to examine into the motives that influenced members in voting for that bill, that the gentleman and his political friends will have to render an account as well as the few Republicans who voted with them.

Mr. LETCHER. So far as that is concerned one good turn deserves another. Now I do not consider the chances are that we are involved, because with the practical illustration of the last session, the gentleman's party—particularly his party *eo nomine* as the Republican—was the only one that was found guilty.

Mr. SHERMAN, of Ohio. The only cases which were investigated were those of one or two Republicans. But here the charge is based upon a vote on a bill, now a law, against which seventy Republicans and two Democrats voted. I desire, as the Union and other party newspapers have tried to cast some reproach upon the party to which I belong, to call the attention of the House and the country to the fact that if there is any wrong, any fraud, any robbery in anything ingrafted in the legislation of the country by the tariff law, that it was not done by the Republican party, but thirty-six of whom voted for and seventy-two against it.

Mr. LETCHER. I will come to that after a little. I do not mean to indulge in this crimination, that either those who voted for it, or those who voted against it, did it from corrupt motives; but there are one or two things connected with the progress of that tariff measure to which I desire to allude—not for the purpose of criminating this man or that man, or to cast a suspicion upon any one party in this House. I desire to offer a substitute for the resolution of the gentleman from Ohio that embodies my own views, and that, I think, if adopted, will enable us to get to a conclusion in a reasonable time, and with some degree of certainty. It is as follows:

Resolved, That a committee of five members be appointed to investigate the charges preferred against the members of the last and present Congress, growing out of the disbursement of \$87,000 by Lawrence, Stone & Co., of Boston, and to report the facts to the House, with such recommendations as they may deem proper.

Now, sir, as I understand the charge which appeared in the New York Herald, connected with the tariff of 1857, it was that the particular bill to which Lawrence, Stone & Co., and those who were employed

in manufactures of the same kind, were wedded, was the bill originally reported by the chairman of the Committee of Ways and Means, and to which I offered a substitute at a subsequent period of the session. The vote was taken on my substitute, and it was rejected; and the original bill, with some modifications, was passed and went to the Senate, where it was substituted by a proposition somewhat similar to, though not entirely the same as the one I had offered in this House. It came back here. It was considered by the House, and it resulted in a call for a committee of conference; and that committee of conference reported a bill, which was subsequently passed. Now, my own belief is that the bill as subsequently passed was in accordance with the peculiar views of Lawrence, Stone & Co. Their *sine qua non*—what they insisted on from the start, as I understood, was that they should have free wool. They complained, and complain still, that free wool was not introduced into this last proposition. They complained, also, that there was a reduction of duty upon certain qualities of printed and stained goods, which operated to their prejudice as the duty was arranged under the bill which finally passed.

Mr. KUNKEL, of Pennsylvania. I would ask the gentleman whether the bill, as it was finally passed, was not supported by the New England manufacturing interest?

Mr. LETCHER. I believe it was, sir, by nearly the whole of them.

Mr. SHERMAN, of Ohio. I would ask whether the bill reported from the Committee of Ways and Means was any more favorable to woolen manufacturers than the bill as it now stands?

Mr. LETCHER. It was more favorable, because it was free wool.

Mr. SHERMAN, of Ohio. That is not my recollection; but the reverse was the fact.

Mr. SEWARD. I object to the gentleman from Virginia farming out the floor in this way.

Mr. LETCHER. I was not farming out the floor; and it is only civil, when a gentleman wants to ask a question, to give him an opportunity to do so; and it is no sort of inconvenience to me. [Laughter.] While I have high regard for my friend from Georgia over the way, I hope, when he finds I am getting along tolerably well, that he will not put in a word to disturb me.

Mr. STEPHENS, of Georgia. I call for the previous question.

Mr. STANTON. I propose to modify my first resolution by substituting for it the following:

Resolved, That a committee of five be appointed by the Speaker, to investigate said charges, and to inquire whether any member or officer of the present or of the last Congress has received any part of said sum, and to report all the facts to the House; and if any member or officer of the present House shall be found to have received any part of said sum, they shall report specific charges against the party implicated, and shall have power to send for persons and papers, and to report at any time.

Mr. LETCHER. I modify my amendment so as to make it include officers of the House, and to leave the sum indefinite; "any sum," instead of "\$87,000."

The SPEAKER. The gentleman from Maryland proposes to amend the first resolution of the gentleman from Ohio, by striking out all after the word "report," and inserting, "all the evidence, and summon before it such persons as it may see fit; and shall report to this House what, in their opinion, this House should do in the premises." Also, to strike out the second and third resolutions.

The previous question was then seconded, and the main question ordered to be put.

The question being first upon striking out the second and third resolutions,

Mr. STANTON demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 120, nays 77.

So the second and third resolutions were stricken out.

The question now being upon the amendment of Mr. DAVIS, of Maryland, to the first resolution, to strike out and insert, it was put; and said amendment was agreed to.

The question recurred upon the substitute offered by Mr. LETCHER.

Mr. WASHBURN, of Maine. I would inquire if that substitute provides for the production and procurement of papers?

The SPEAKER. It does not; but if there be no objection, the word "papers" can be inserted.

No objection being made, the substitute was so modified.

The substitute, as modified, was then agreed to.

Mr. STANTON. The substitute, as agreed to, is designed in its phraseology to stand alone without the preamble. The House has seen fit to transfer the whole thing to the other side, and I withdraw the preamble.

JANUARY 18, 1857.

[Globe, p. 321.]

The Speaker announced as the committee under the foregoing resolution Messrs. Benjamin Stanton, of Ohio; Sydenham Moore, of Alabama; John C. Kunkel, of Pennsylvania; Augustus R. Wright, of Georgia, and William F. Russell, of New York. On January 21 Mr. Kunkel was excused from service on said committee, and on January 22 the Speaker appointed Mr. Samuel A. Purviance, of Pennsylvania, to fill the said vacancy.

FEBRUARY 11, 1858.

[Globe, p. 684.]

Mr. STANTON. I am sorry to be under the necessity of again troubling the House with a question of privilege from the select committee of which I am chairman; but we find it difficult to make any progress, and I am instructed by the committee to make a special report. I ask that it be read.

The Clerk read the report, as follows:

The select committee appointed to investigate the charges against the members and officers of last Congress, growing out of the disbursement of any sum of money by Lawrence, Stone & Co., or other persons, now report:

That on the 8th day of February, A. D. 1858, John W. Wolcott, of Boston, in the State of Massachusetts, was called and sworn as a witness, and was examined by said committee, and, amongst other matters not material to the matter which the committee now desire to bring to the attention of the House, testified as follows:

"Question. Had you any funds placed in your hands, belonging to any of the manufacturers in Massachusetts, for the purpose of influencing members of Congress upon the passage of the tariff act?

"Answer. I had not.

"Question. Were you ever authorized by any of them to make any promises of future benefits, in the event of the passage of that act?

"Answer. I was not.

"Question. Did you, after the close of the last session of Congress, receive from the manufacturers, either in Boston or elsewhere, any funds, money, negotiable securities, or anything of that sort, to be used in that way?

"Answer. No, sir.

“Question. Did you, at any time during the months of March or April, 1857, receive from Mr. Stone any negotiable securities, or money, or credits of any kind?

“Answer. Never. Never for any such purpose as that, either directly or indirectly.

“Question. Did you receive at any time in the early part of March a considerable sum of securities for any purpose?

“Answer. Never for any purpose connected with the tariff, either to be paid to members of Congress, for the purpose of influencing their action, or to be paid to their agents.

“Question. Nor for their benefit?

“Answer. Nor for their benefit, either directly or indirectly.

“Question. Nor in satisfaction of previous arrangements or promises?

“Answer. Nor in satisfaction of previous arrangements or promises.

“Question. Did you receive any securities at any time during the month of March last, to the amount of \$30,000 at one time?

“Answer. Not for any purpose of that sort.

“Question. Did you ever for any purpose?

“Answer. Well, that would be a matter of strictly private business; I did not for the purpose of influencing members of Congress or their agents.”

Whereupon the witness asked for time to consult counsel in regard to his obligation to answer the question last propounded to him, which was granted.

That on the 11th instant the witness again appeared before said committee and submitted the following as his answer to said question, and peremptorily refused to make any other or further answer thereto.

“Question. Did you receive from the firm of Lawrence, Stone & Co., sometime in March last, a sum or securities or money of the amount of \$30,000, more or less?

“Answer. I did not, in March last, nor at any other time, receive from Lawrence, Stone & Co., any money or securities of any amount, for the purpose of influencing, or to be used in influencing, directly or indirectly, the action or vote of any member or officer of the present or the last Congress upon the tariff or any other act or measure considered by Congress, or before it, or contemplated to be before it; nor did I ever pay, or promise to pay, directly or indirectly, any money or pecuniary consideration to any officer or member of any Congress for his vote or services in the passage of, or to influence his action in relation to, the tariff or any other law; nor did I ever give any money or securities to any person for the purpose of being paid to any officer or member of Congress for his vote or influence, directly or indirectly, upon any act under the consideration of Congress, nor have I any knowledge that any such act or thing was done by any other person.

“I am advised by my counsel, Messrs. Reverdy Johnson and James M. Keith, whose opinion I have obtained since the present question was propounded to me, that the above answer is a full answer to everything which such a question may involve, falling under the jurisdiction of the House of Representatives, touching the inquiry which the committee are constituted, and could only be constituted, to investigate. And, acting under the same legal advice, I most respectfully submit that the question in its present form is not of itself ‘pertinent’ to the only inquiry which the House, in this instance, has a legal right to institute.

“If, acting under such a power, a committee of the House can compel a witness to answer such a question as this except by saying that he did not use at all, directly or indirectly, any money, coming from any quarter, to influence directly or indirectly the action or vote of any member of Congress, and that he has never paid any money to any one for such a purpose, and has no knowledge that any money was used for that purpose, or any other illegal purpose, regarding Congress, or any of its officers, I respectfully submit that it gives to the committee or the House the right to inquire into my private business and social relations, which, except so far as they may tend to prove the alleged improper influencing of members of Congress in some official duty, is as much beyond the jurisdiction of the House, and, of course, of the committee, as it would be beyond their power to investigate the private business and social relations of any other citizen, without such a charge or implication of corruption, or attempt to corrupt Congress or any of its members, having been made.

“J. W. WOLCOTT.

“WASHINGTON, D. C., February 11, 1858.”

Your committee having heretofore had evidence that the firm of Lawrence, Stone & Co. had, early in March, 1857, paid to the said John W. Wolcott the sum of \$58,000 in two payments, one of \$33,000 and the other of \$25,000, which constituted a part of the charge of \$87,000 which appeared from the books of Lawrence, Stone & Co. to have been expended in procuring the passage of the tariff of 1857, believe it very material and important to the elucidation of the matter referred to them, to know from Mr. Wolcott whether he admits the receipt of any such sum; and if so, how it was expended; that the House and the country may judge whether it was designed to influence the legislation of Congress or not.

Your committee therefore recommend the adoption of the following resolution:

Resolved, That the Speaker be, and he is hereby, authorized and required to issue his warrant to the Sergeant-at-Arms of this House, commanding him to arrest the said John W. Wolcott wheresoever he may be found, and have his body at the bar of the House forthwith to answer as for a contempt in refusing to answer a proper and competent question propounded to him by a select committee of this House, in pursuance of the authority conferred by the House upon said committee.

Mr. STANTON. I have but a word or two to say in regard to the resolution. The House will understand from the statement which is made in the report in regard to the testimony that has already been taken, that so far the proof before the committee shows that of the \$87,000 charged upon the books of Lawrence, Stone & Co. as having been expended in procuring the passage of the tariff of 1857, \$58,000 have gone into the hands of Mr. Wolcott. That is the proof as it now exists before the committee. Upon the inquiry being propounded to Mr. Wolcott as to whether he received that sum, he answers that he received neither that nor any other sum for the purpose of influencing the action of Congress, but he peremptorily refuses to answer whether he received it for any purpose.

Now, sir, in the judgment of the committee, that question as to whether the payment to Mr. Wolcott, and the disbursement by him of that sum, was designed to influence the action of Congress, is a question of opinion, about which the committee, the House, and the country might differ with Mr. Wolcott. We believe that it is indispensable, in order to ascertain whether the action of Congress was influenced by the disbursement of this sum or not, that we should know whether any portion of the money charged upon their books as having been disbursed for corrupt purposes was so used; and that we have, therefore, a right to know how it was disbursed. That is the single, simple, and sole inquiry. The agent who, as the proof shows, was charged with the disbursement of a large proportion of that money says that it was not disbursed for corrupt purposes, but he refuses to answer how it was disbursed, whether he received it at all, and to whom he paid it. The simple question for the House to determine is, whether the committee have a right to demand of this witness an answer as to the simple fact of the receipt of that money; whether he received it for any purpose, and if he received it, to whom, and for what purpose he paid it?

Now, I submit it as a legal proposition, that any court of justice has a right to know all the facts which may or may not tend to elucidate a question submitted to the court and jury. The question of the intention of the witness; the question of the object of the appropriation of money; the question as to whether the manner in which it was disbursed may have influenced properly or improperly the action of the House—these are not questions for the witness, but they are questions for the tribunal that is called upon to decide whether that disbursement was an honest or a dishonest disbursement. I submit to the House that if this committee can not compel a witness to disclose any fact except such facts as, in his opinion, tend to show that disbursement operated corruptly upon Congress, then the committee had better be disbanded at once. If this House is thrown upon the judgment of the parties to these transactions; upon their opinion as to what is criminal and what is not; as to what is a corrupt appropriation of money and what is an honest appropriation of it; why then there is an end of all investigations into corrupt practices in this House.

All that this committee ask is that the House shall confer upon them power to know the facts in relation to this disbursement, that they may report to the House for its action their judgment as to whether the disbursement was corrupt, or whether it was honest. The witness may be

right or he may not be right. The committee may draw an erroneous inference or a just inference from the facts as they may be exhibited before them, but they want the facts which are within the knowledge of the witness.

Mr. Speaker, I will now ask for the reading of the act of Congress passed at the last session in regard to the duty of witnesses in making answers to the questions propounded to them, and in regard to the power of Congress, and committees of Congress, over witnesses called before them for the purpose of testifying. It will be remembered that by that act the common-law rule in relation to a witness having the right to protect himself from answering any interrogatory propounded to him, because his answer might tend to criminate him, disgrace him, or subject him to liabilities, was changed, and that the House have a right, under that act, to demand of the witness an answer to any question propounded to him material to the inquiry before them, without regard to its effect upon the civil or criminal rights of the witness. Upon the reading of the law, which is now in the hands of the clerk, I have no further remarks to make. I submit the question upon this plain statement. There is a simple and distinct issue between the witness and the committee as to whether he is bound to give an unqualified and categorical answer to the question whether he received this money or not. That is the whole question. It is suggested to me that I should call the previous question. This witness has had eminent counsel to advise him as to his rights in this matter, and I take it for granted that he has prepared himself, in the answer which he made to the committee, and which is now submitted to the House, to test the power of the House by an application to the courts.

I do not desire to precipitate any action upon the House that will not be sustained by the judicial tribunals when they are called upon to decide the question. I ask the Clerk to read the law of the last session upon the question.

The Clerk read the law, as follows:

“Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That any person summoned as a witness by the authority of either House of Congress to give testimony, or to produce papers upon any matter before either House or any committee of either House of Congress, who shall willfully make default, or who, appearing, shall refuse to answer to any question pertinent to the matter of inquiry in consideration before the House or committee by which he shall be examined, shall, in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor, in any court of the United States having jurisdiction thereof, and on conviction, shall pay a fine not exceeding one thousand dollars, and not less than one hundred dollars, and suffer imprisonment in the common jail not less than one month, nor more than twelve months.

*“SEC. 2. And be it further enacted, That no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture, for any fact or act touching which he shall be required to testify before either House of Congress, or any committee of either House, as to which he shall have testified, whether before or after the date of this act; and that no statement made or paper produced by any witness before either House of Congress, or before any committee of either House, shall be competent testimony in any criminal proceeding against such witness in any court of justice; and no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of such paper may tend to disgrace him, or otherwise render him infamous: *Provided*, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.*

“SEC. 3. And be it further enacted, That when a witness shall fail to testify, as provided in the previous sections of this act, and the facts shall be reported to the House, it shall be the duty of the Speaker of the House or the President of the

Senate to certify the fact, under the seal of the House or Senate, to the district attorney of the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

Mr. Phillips took the floor.

Mr. UNDERWOOD. I wish to make this suggestion to the gentleman from Pennsylvania [Mr. Phillips], which I think will perhaps obviate the necessity of his addressing the House. We are called upon, it seems to me, to tread upon very delicate ground, and I do not think we ought to act precipitately. I rise, therefore, to suggest that, by general consent, the subject be passed by informally for to-day, until the answer of the witness shall have been printed, and each member may be able to know exactly the question propounded by the committee, and the answer given by the witness. I make this suggestion, which I hope will meet the approbation of the gentleman from Pennsylvania and the House, as I am sure it will conduce to the proper action of the House.

Mr. PHILLIPS. I differ very much from the gentleman from Kentucky [Mr. Underwood] in this matter. I think this is a question upon which the House should take prompt action. It is time the House should establish some rule of action upon this subject, by which it is to be governed. The House should either abandon these investigations, or compel the answers of reluctant witnesses. The fault, in my opinion, is partly in the committee themselves. I think they have been too indulgent. But I agree with the chairman of that committee, the gentleman from Ohio [Mr. Stanton], that it is time now for the House to act, and to make a refractory and contumacious witness disclose all he knows on the subject of inquiry. I can imagine no case of action more directly calling for the exercise of the authority of the House than the present. A committee of this House, clothed with the authority of the House, authorized to send for persons and papers, authorized to examine witnesses upon a matter affecting the character of members of the present or preceding Congress, ask this witness a question which can affect him in nothing. To be sure, it may be the first of a series of questions which may bring upon him consequences which, if his conduct has subjected him to it, ought to be brought upon him. But, sir, if you consider the question propounded in itself, it is eminently proper. I ask if there be any member of this House, whether lawyer or otherwise, who will stand up here and allow a witness to substitute his own judgment for that of those who are to judge from his testimony?

Mr. Speaker, how is the issue presented? The committee report here that they find the fact that there is charged upon the books of certain gentlemen \$87,000, expended to procure legislation; that there are charges upon their books, if I rightly understand the report, of that sum having been paid in money, or in bills negotiable, to this witness.

Mr. WRIGHT, of Georgia. And the fact is established by other testimony, aside from the books of Lawrence, Stone & Co.

Mr. PHILLIPS. The fact is established by the books of Lawrence, Stone & Co., and by other evidence before the committee, which satisfies them, and that satisfies me, that this witness received \$57,000 or \$58,000 of this money. With this state of facts the witness refuses to answer the question propounded him in reference to this money; and yet the gentlemen from Kentucky [Mr. Underwood] suggests that we should postpone our action, to see whether or not there is not something to examine—whether or not there is something to hesitate about.

Sir, when these facts have been disclosed to the House, they leave no room for inquiry. It is the right and it is the duty of the House to

clothe that committee with all the powers of the House, and to make that witness answer all their questions categorically, one by one, which may lead to the truth in the inquiry they are pursuing.

The committee propounded this question: "Did you at such a time receive such an amount of money, or bills negotiable?" The question, with the information before them, was one eminently proper. They are met with what? By an attempt, upon the part of the witness, to set up his opinion for theirs as to what were correct and what were improper appliances of this money. Now, sir, the members of that committee and the members of this House may differ as to what were proper and what improper uses for the money.

The committee ask whether he received the money, and he responds that he did not receive it for corrupt purposes. Sir, that is our right, and it is the committee's right to judge. We want the facts, and we can judge whether the purposes for which it was used were corrupt or not. What would be said to a witness in a court of justice, when he was asked if he received a sum of money, if he answered: "I did not receive any money for corrupt purposes?" The judge would say to him; "Did you receive the money? Answer that." If he answers, "I did;" then, "For what purpose did you receive it?" would be the next inquiry. "What did you do with it?" Then, knowing that he received it, knowing what took place when he received it, the court would learn what he did with it. If that did not enable the committee to ascertain the truth of the charge that it was for a corrupt purpose, it would do what is a legitimate thing—it would turn them to others by whom this corrupt purpose could be ascertained if it existed. There can be no doubt about that.

My purpose in rising was not so much to vindicate the action of the committee, which needs no defense from me, as to remind the House that there is something due to its own dignity. There is hardly a case of investigation where some witness does not attempt to make a hero of himself, and a martyr sometimes. These cases of contumacy are repeated, and are growing more and more frequent. Why? Because we encourage them. If contumacious witnesses were treated as they ought to be, we would have few of them hereafter. If the committee will pardon me for saying it, if, instead of indulging this gentleman, they had called upon him to give an answer to the question, and refused to receive any that was not, in their judgment, an answer, the example would have been worth something.

The question now is, whether we shall abandon this inquiry? We might as well abandon it as only partially to carry it on. Shall the inquiry be abandoned, or shall this witness, who is proved to have received money, be made to testify before this House to the facts which he alone knows?

Mr. SEWARD. As I desire to be enlightened on this subject, and especially on the law of the case, I would inquire whether the witness has not expressly stated that he never received any money, to be used either directly or indirectly to control the legislation of Congress.

Mr. PHILLIPS. I have already stated that the witness has substituted his own judgment for the judgment of the committee. We are the judge of that.

Mr. SEWARD. I ask the gentleman if that is an opinion? It is not an opinion of the witness. The only question arising, if the money has been traced to his hands, is this: if the witness has committed perjury, he is then liable to be indicted; but, sir, he has sworn unequivocally that he never used any of that money, directly or indirectly, to affect

the legislation of this House. That is not an opinion. It is true that, in answer to a preceding question, the witness stated he never used any money for corrupt purposes. That was an opinion; but, when he declared under oath, that he never used any money, directly or indirectly, to control the legislation of the country, that was a fact; and if the money be traced to his hands, and he received the money for that purpose, then, having denied it, he could be indicted for perjury.

Mr. PHILLIPS. I differ with the gentleman. That is as much an opinion as the other. Let him tell us how he used the money, and then we can tell whether it was for a corrupt purpose or not. He has no right to say that he did not use it to control the legislation of the country; that he did not use it directly or indirectly for that purpose. What did he get that money for? Did he get it from Lawrence, Stone & Co.? What did he get it for? To whom did he pay it? Perhaps he would have told to whom he did pay it, and who did use it directly for the purpose charged in this inquiry.

Mr. SEWARD. I put the question to the gentleman in this shape: Suppose he was upon the bench adjudicating a case, and a question was propounded to a witness in relation to a matter which did not affect the merits of the case; would he compel the witness to answer? A court would judge of that point, and that is what this House is going to do now. And, sir, a committee created by authority of this House has not a right to ask a witness a question on other matters than those confided to them to be investigated. The witness has some rights as well as the House; and I lay it down as a proposition which can not be denied, that neither this House nor any court has the right to go into the private affairs of witnesses unless the transaction relates to the business the court or House has under investigation. It is so with a court, and this House should be governed by the same rules.

Mr. PHILLIPS. There can be no real difficulty about this question. I would say to the gentleman from Georgia, that no judge, and no committee, would make or sustain any inquiry that was not pertinent to the matter before them. But of the pertinency of the question the House is the judge. Did the gentleman ever hear of a witness attempting to judge that? I ask the gentleman to answer.

Mr. SEWARD. I never did. I understand that, leaving the committee, he has come here to the proper tribunal to decide the question. I do not understand that the committee is competent to decide the question.

Mr. PHILLIPS. If it is competent for the committee to inquire whether money or other means were used for the purpose in influencing the legislation of Congress, the proceeding must be carried on as such examinations are made before courts. They must do it as they say lawyers get to Heaven—by degrees. They must ask one question at a time. They must begin and ask: "Did you get the money from these people?" There has been a charge that certain persons expended money to procure the passage of certain legislation. There is, at least, foundation for the charge, as I am told, in testimony already taken, and in the books. This gentleman is represented to have received the money. The first question is, "Did you receive the money?" I apprehend the gentleman will find no instance to the contrary, that because the witness thinks it is his private business, he can arrest an investigation. Where would this thing end?

Mr. SEWARD. I do not deny that the private business of the gentleman can be inquired into, if that is under adjudication. I take it that the gentleman has answered, in fact, that he did get some money from

Lawrence, Stone & Co. The question was never propounded to him what he did with it.

Mr. PHILLIPS. I differ with the gentleman.

Mr. SEWARD. I ask that it be read. I have never heard it. He said that he never used any money, directly or indirectly, to control the legislation of Congress.

Mr. PURVIANCE. The question stated by the gentleman was asked.

Mr. SEWARD. I ask the record to be read. The committee has never asked the witness what he did with the money.

Mr. PHILLIPS. The question asked by the committee was, whether he ever received the money with which he appears charged upon the books? I beg to remind the gentleman that that was the question asked—whether he received this sum of money—whether he received these two particular sums of \$24,000 and \$33,000? If he did receive them, there is a manly way of answering. There is a truthful way of answering.

I differ with the gentleman from Georgia, who says that the witness has already admitted its receipt. He admits it with an equivocation. He does not admit it in such a way that, if it is not true, it could be the ground of an indictment for perjury. The question propounded was, "Did you receive these two sums?" The answer is, "I never received them for a corrupt purpose; I never received them for the purpose of influencing legislation." It by no means follows that he received them at all. That is not a fair inference to be drawn. On the contrary, the witness denies that this House shall draw that inference; for he undertakes to tell the House, through its committee, that we have no right to make an inquiry whether he received it absolutely, and that the only inquiry we have the right to make is the one to which he has limited his answer.

Mr. PURVIANCE. I wish, in the first place, to correct a misrepresentation under which the gentleman from Georgia [Mr. Seward] labors. The witness absolutely refuses to answer whether he received the money; and, as a matter of course, refusing to answer that question, in the first instance, it would be idle to ask him the second question: "What did you do with it?" And yet, sir, in the course of the examination, the witness was asked that question in that way, and he turned to the committee and said: "I have not yet told the committee that I have received a single dollar." Now, it appears from the evidence before the committee that the sum of \$58,000 was paid over into the hands of this man; and that it was paid into his hands for a corrupt purpose, is believed from the testimony of the witness who paid it. The witness refuses to answer whether he received the money. The committee say they have a right to the answer; and I think it will be obvious to the House, at once, that we have a right to the answer, because, if he answers that he did receive the sum of \$58,000, but disclaims having made any application of it for a corrupt purpose, that may be consistent with the truth; and yet the \$58,000 may have been applied for a corrupt purpose, for he may have paid it to A, B, C, and D, without reference to the mode and manner of its application. We have a right to have answers to these questions: First, "Did you receive the money?" Second, "If you did receive it, did you disburse any portion of it?" And third, "If you did disburse any portion of it, to whom did you disburse it?" If he says he disbursed a portion of it, we have a right to the names of the parties to whom he disbursed it, for the reason that we can subpoena those parties, and question them, and they may, perhaps, be the very parties who made the corrupt

application of the money; so that, in any point of view, I think that this witness stands in a contumacious attitude towards the committee, and towards the House.

Mr. KUNKEL, of Pennsylvania. Let us have the answer read.

Mr. PHILLIPS. The answer is equivocal from beginning to end.

Mr. MAYNARD. I ask permission to interpose a motion to have the report printed and postponed to some hour to-morrow, so that we can have it before us, and can understand it better than is possible from merely hearing it read.

Mr. PHILLIPS. I do not yield for that purpose, but I will allow the question and answer to be read.

The Clerk read the question and answer as follows:

"Question. Did you receive from the firm of Lawrence, Stone & Co., some time in March last, a sum of securities or money of the amount of \$30,000, more or less?"

"Answer. I did not, in March last, nor at any other time, receive from Lawrence, Stone & Co. any money or securities of any amount for the purpose of influencing, directly or indirectly, the action or vote of any member or officer of the present or to be used in influencing, the last Congress upon the tariff or any other act or measure considered by Congress, or before it, or contemplated to be before it; nor did I ever pay, or promise to pay, directly or indirectly, any money or pecuniary consideration to any officer or member of any Congress for his vote or services in the passage of, or to influence his action in relation to, the tariff or any other law; nor did I ever give any money or securities to any person for the purpose of being paid to any officer or member of Congress for his vote or influence, directly or indirectly, upon any act under the consideration of Congress, nor have I any knowledge that any such act or thing was done by any other person."

Mr. PHILLIPS. That answer is as equivocal as it possibly could be made. He denies having paid any money, or given any pecuniary consideration, and he limits his answer to that. He denies the receipt of money for corrupt purposes, and then goes on to say that he did not pay away any money, or give any pecuniary consideration; and then he again uses the word "money," and, I think, "securities."

Mr. STANTON. I think the gentleman from Pennsylvania will find that he peremptorily declines to give a direct answer to the question.

Mr. PHILLIPS. I was coming to that. He says:

"Nor did I ever pay, or promise to pay, directly or indirectly, any *money or pecuniary consideration* to any officer or member of any Congress, for his vote or services in the passage of, or to influence his action in relation to, the tariff or any other law; nor did I ever give any *money or securities* to any person," etc.

Now, the gentleman from Georgia [Mr. Seward] argued just now that, when he said he did not receive the money for that purpose, it was a fair innuendo that he did receive it for some other purpose. I do not think the gentleman's inference is well founded; but it is just as fair an inference from that answer that he gave some consideration other than a pecuniary consideration. But the witness goes on to say to the committee what I think is most contumacious of all. He says:

"I am advised by my counsel, Messrs. Reverdy Johnson and James M. Keith, whose opinion I have obtained since the present question was propounded to me, that the above answer is a full answer to everything which such a question may involve, falling under the jurisdiction of the House of Representatives, touching the inquiry which the committee are constituted, and could only be constituted, to investigate."

Now, I have never known an instance in which a witness has endeavored more to evade the force of the inquiry, or been more contumacious, than the present one. And the question with me is, whether this committee shall be discharged from the further consideration of the subject, or whether the witness shall be properly dealt with as a contumacious witness—not, as I said before, made a hero or a martyr, but when brought to the bar, treated as a contumacious witness ought to be

treated, and not allowed, as has been too much the practice, to deliver to the House a harangue or homily upon the duties of members of the House. As I said before, I almost blame the committee for indulging the witness to this extent. The time has come, now that we have so many investigating committees around us, when the House should exert all the authority possible for the purpose of making witnesses answer directly and fully all inquiries.

A word now as to the inquiry. The question asked the witness was: "Did you receive this money?" If he did not receive it for any improper purpose, he could have answered "yes." Then would have followed the inquiry as to why and how he received it; then as to whether he used intermediate agents; and then as to his own imputation—I mean the imputation conveyed by his own evasive answer—to find out whether some consideration, even if it was not pecuniary, whether some inducement, whether some temptation, if it was not a consideration or inducement, was ever held out to anyone in authority to procure the passage of the law.

I trust, Mr. Speaker, that the action of the House will not be delayed; that the witness will be brought to the bar of the House at once, and the matter disposed of before we adjourn. We encourage these things. Each successive attempt seems to bring on new ones. If this case is dealt with as it ought to be, properly, sharply, and promptly by the House, by making the witness answer, or subjecting him to pains and penalties if he refuses to testify, and handing him over to the authorities, under the act of last session, depend upon it we shall not be troubled again in this way.

Mr. REAGAN. The question propounded by the committee is clearly a legal and proper question. Did the witness give a legal answer? He had no legal privilege to refuse to answer the question; but, in order to excuse himself for refusing to answer it, he goes on to answer a series of questions never propounded by the committee. If the witness desires to rely upon the ground that he might criminate himself by his answer to the question propounded, let him make that point. But he does not attempt to do it. He refuses to answer a legal question propounded by the committee, and goes on to give answers in response to questions never propounded by the committee, thereby treating that committee and this House with contempt. I trust this House will not indulge any such captiousness by deferring this matter until to-morrow. I call the previous question upon the resolution.

Mr. JOHN COCHRANE. I ask the gentleman to withdraw it for a moment.

Mr. REAGAN. I will withdraw it, at the request of the gentleman.

Mr. JOHN COCHRANE. I will not detain the House for more than a moment. Mr. Speaker, the issue has been fairly tendered by the witness who has been summoned before this committee of the House as to its powers. He has tendered it under the advice of counsel. He has declined answering categorically a plain, direct question; and it is now for this House to determine whether under these circumstances it will accept the issue and enforce its authority.

Under these circumstances I think it is unwise, nay, more, it is undignified for this House to delay. I think the time has arrived when we are to assert the power of the law. I think the time has arrived when we can not with honor to ourselves, when we can not without disgrace, declare that we will not meet the issue, or that we will postpone it. It seems to me that we have hardly yet arrived at the true point in issue between the House and the witness. There are two exigent cases pro-

vided for in the law. In either of these it becomes the duty of the Speaker to enforce certain acts. In either of them it is devolved upon the House to vindicate its authority. The one is where a witness refuses to appear before the committee. The other is where, having appeared, he refuses to answer. In this case the witness appeared; and the question is, whether, from the report of this committee, he has refused to answer a proper question. Nay, I may say more. It is immaterial whether the question be proper or improper. It is a question propounded under the authority of the House by a committee acting as its instrument, and it is not for gentlemen to take their positions that the question was an improper one.

But to pass from that point; the question is clearly a proper one, notwithstanding the fact that the witness is informed by his counsel that the question is not pertinent to the matter in inquiry before the committee, or within the scope of the authority of the House.

But there is another act of contumaciousness which clearly places him in the contempt of the House, and which is worthy of our serious consideration. Has there been here a refusal upon the part of this witness to answer the question propounded by the committee, under authority of the House? If we can only answer the question in the affirmative, then the witness should be summoned and dealt with by the authority of the House. Now, then, what is the question propounded. It is, whether he has received a certain sum, in money or securities? What is the answer? That he has not received that or any other sum for a specific purpose. Why, sir, it is an evasion. It is no answer of the question at all. Let me illustrate. Suppose, in one of the courts of law, the question is propounded to a witness: "Did you, on a certain day, receive of your neighbor a horse?" Answer: "I did not upon that day or any other day receive a horse of my neighbor, for the purpose of going from Washington to Georgetown." Is there any man of common sense who will pretend that is an answer to the question? It is not? A full, categorical answer to the question is yea or nay; and he who attaches a condition to his answer evades the question, and in every tribunal would be held as refusing to answer, especially when the witness declines to answer in any other way, and is held to be a contumacious witness.

Now, sir, there is the issue. It is full, well defined, naked. Gentlemen can not close their eyes to it. And if it is thus presented, and if it is presented to us with care, and under the advice of counsel, with deliberation, under which the authority of this House is not only doubted, but scorned, there is no position which this House can take except to accept the issue, and bring the witness before us under the allegation for contempt.

Mr. SEWARD. I know nothing about this witness, and care but very little; but the law ought to be respected in this matter. If we have got arbitrary power here, that is no reason why we should exercise it. Now, sir, what is the issue to be tried before this House? It has been charged that the legislation of Congress has been corrupted by the improper use of money. That is the issue. That is the record, and I hold gentlemen up to it. Analogizing this case to an indictment where an individual is charged with stealing property, or with the commission of any other crime, I put it to legal gentlemen upon this floor, whether they can travel out of the record and compel witnesses to relate facts outside of the indictment upon which the issue is made up and is to be tried?

Mr. WRIGHT, of Georgia. The evidence is never put into the bill of indictment.

Mr. SEWARD. It never is; but your proofs must correspond with the allegations. That is the law. Now, I deny that this witness is in contempt of the authority of this House in this stage of the proceedings. He had a right to say to the committee, when they put questions to him, "I think your questions are improper, and I deny your authority to compel me to answer them. You have no right to compel me to disclose facts connected with my private transactions in life. I will go before the House of Representatives, and will there present my legal rights." Is there any contempt in that? Is there anything which should subject this witness to reproach?

Mr. PHILLIPS. I ask the gentleman whether this witness sets up any such defense as not recognizing the authority of the committee? Or, rather, does not he assert, in the broadest language, that this is all the answer he is willing to give, under any circumstances, to the question?

Mr. SEWARD. I do not understand the witness to say any such thing. He says what is right, and what every man in the country has a right to say. He says to the committee, "I deny your right to propound the question;" and then what? He had no power to bring it before the House. The presumption was that the committee would come to the House, and ask its opinion on the subject, and when the House decides the question on proper legal principles, that the witness shall answer this question, I undertake to say then that the witness will answer it.

Mr. KUNKEL, of Pennsylvania. Speaking of the record in this case, I would inquire of the gentleman from Georgia whether, in the first place, the House did not raise the committee upon a statement derived from the books of Lawrence, Stone & Co., that \$87,000 had been expended to influence legislation of Congress, and whether, in the course of the investigation of the committee, it does not appear by other evidence than the evidence of the witness in this case, that a large portion of that money passed into the hands of the witness himself. Now, I desire to know of the gentleman whether he thinks that the witness, standing in such circumstances, can avoid and evade all further answer, Must we be satisfied with the answer that he does not know whether it was expended directly or indirectly to influence legislation? I ask him whether, as a lawyer, or a judge, or as a member of this House, he will not hold it to be the right and duty of the House and the committee to require him to say how it was expended by him, in order that the House or the committee may call upon the other persons into whose hands it may have passed, and still another, and still another, until at last they find how it was expended.

Mr. SEWARD. Upon the case made up by the gentleman in his speech——

Mr. KUNKEL, of Pennsylvania. It is according to the facts.

Mr. SEWARD. It is not. It is not the record; and I will show the gentleman that it is not.

"Did you receive from the firm of Lawrence, Stone & Co., sometime in March last, a sum of securities or money of the amount of \$30,000, more or less?"

That is the question. The answer is:

"I did not, in March last, nor at any other time, receive from Lawrence, Stone & Co. any money or securities of any amount for the purpose of influencing, or to be used in influencing, directly or indirectly, the action or vote of any member or officer of the present or the last Congress, upon the tariff or any other act or measure considered by Congress or before it, or contemplated to be before it. Nor did I ever pay or promise to pay, directly or indirectly, any money or pecuniary consideration to any officer or member of any Congress for his vote or services in the passage of, or to influence his action in relation to, the tariff or any other law. Nor did I ever give any money or securities to any person for the purpose of being paid to any officer or

member of Congress for his vote or influence, directly or indirectly, upon any act under the consideration of Congress. Nor have I any knowledge that any such act or thing was done by any other person."

Mr. CLARK B. COCHRANE. Does the gentleman regard that as an answer to the question?

Mr. SEWARD. I do not consider it an answer to the question whether he received \$30,000 from these parties or not. I say it is not an answer.

Mr. CLARK B. COCHRANE. Then is not the House entitled to a direct answer to the question?

Mr. SEWARD. I say that when the witness informed the committee that whatever money he received related to a private transaction, they had no right to make him disclose that private transaction. He denied that it had any reference to the matter which was being tried by the committee, on the record made up by the resolution referring this whole subject to the committee.

Mr. TAYLOR, of New York. I would like to ask the gentleman upon what legal principle he excuses the witness from answering as to what disposition he made of this money?

Mr. SEWARD. I will answer that; that question was never propounded to him, what he did with the money.

Mr. PURVIANCE. I will tell the gentleman for the second time, as a member of the committee reporting the pending resolution, that the gentleman is laboring under a misapprehension.

Mr. SEWARD. Then if I am mistaken, I am mistaken because the record does not enlighten me. I ask the gentleman to show it to me. I am trying this matter upon legal principles, and upon the record made here by the committee, and upon which they ask the judgment of the House.

Mr. MOORE. I desire to explain in regard to the examination of this witness before the committee. The gentleman from Georgia is clearly under a mistake. When the witness was asked whether he received this money, he refused to answer the question.

Mr. SEWARD. I can not yield any further. I can not go back into the committee room to inquire what transpired there.

Mr. MOORE. Then you must not make the charges. You do not give the members of the committee time to make an explanation of the matter.

Mr. SEWARD. I will take the explanation that is upon the record. It is upon that we are called to decide. I say that if the record shows that the question has been propounded, "What did you do with the money?" and the witness had refused to answer, then I should have insisted upon exerting the full authority of the House.

Mr. PURVIANCE. The answer of the witness was, that he had not yet said that he received any money.

Mr. SEWARD. That may have happened in the committee room. I do not know about it. I hope the committee, for the purpose of enlightening us, will complete the record, that we may have the whole case before us, and not have it made up of statements first of one and then of another. We are trying the legal right of the House, not to punish a witness for contempt, for contempt will only attach to a witness that shall have disputed the orders of the House. When the House shall decide the question, whatever may be that decision, right or wrong, if the witness does not stand up to it I am for imprisoning him.

Mr. CLEMENS. I desire to call the gentleman's attention, and the attention of the House, to the answers of the witness to three different

questions propounded by the committee, which the gentleman seems to have entirely overlooked in the course of his remarks:

"Question. Did you receive any securities of any kind during the month of March last, to the amount of \$30,000 at one time?"

"Answer. Not for any purpose of that sort."

Implying that he had received the sum of \$30,000.

Mr. SEWARD. I said before I got the floor to make my speech that the witness had impliedly acknowledged he received \$30,000; but he denied that he received it for the purpose of corrupting the legislation of Congress—the very matter which the committee had invited the attention of the witness to.

Mr. CLEMENS. Here are other questions:

"Did you ever for any purpose?"

What does the witness say? His answer is:

"Well, that would be a matter of strictly private business."

Mr. SEWARD. I say so too. I will defend the witness in that. I will say that the committee never had the right to ask the witness whether he received money for any purpose.

Mr. KUNKEL, of Pennsylvania. If the gentleman will allow me a word. Suppose this case, that the witness received from Lawrence, Stone & Co. \$30,000 without a word being said as to the purpose for which it was given, and handed it over to a third person in the same manner, who used it corruptly. In such a case, if the committee must be satisfied with the answer that witness did not receive or pay over with corrupt purpose, I ask the gentleman from Georgia how he would ever get at the truth? Would he excuse the man for not answering under such circumstances?

Mr. SEWARD. No, sir; I would not. But I should say it would be a very fruitless act of generosity to hand over to any gentleman \$30,000 for no specified purpose, especially in these hard times.

Mr. KUNKEL, of Pennsylvania. That may be; but it is doubtless often done in such cases.

Mr. SEWARD. But this witness denies that any money was used by him, or by any other person, for the purpose of corrupting any member or officer of the House.

Mr. KUNKEL, of Pennsylvania. That he knows of.

Mr. SEWARD. That he knows of, of course. I presume you do not want the witness to state things which are beyond his knowledge. I say that the witness has disclosed every fact which would go to show that he had received money for a corrupt purpose, or in any shape, manner, or form, to buy votes, to influence members, or to control the action of the House.

Mr. STEPHENS, of Georgia. Let the resolution be read.

The resolution was again read.

Mr. STEPHENS, of Georgia. I merely wish to say, that I think that the question put by the committee was a very proper one; that the witness is in contempt in refusing to answer it; and that he ought to be made to answer it. I thought, from the remarks of my colleague, that the resolution contemplated the immediate imprisonment of the witness. I would not go that far, but I think he ought to be brought to the bar of the House.

Mr. SEWARD. It does contemplate immediate imprisonment.

Mr. STEPHENS, of Georgia. No, sir; it only contemplates that he shall be arrested and brought to the bar of the House to answer.

Mr. SEWARD. That is imprisonment.

Mr. STEPHENS, of Georgia. That is arrest, but not exactly imprisonment. It seems to me to be perfectly right that the witness should tell whether he got any money from Lawrence, Stone & Co., and, if so, what he did with it. I demand the previous question.

Mr. SEWARD. I will inform my colleague that the record does not show that the question was ever put to the witness what he did with the money.

Mr. STEPHENS, of Georgia. I know that; but he does not answer the question whether he got it or not. I maintain that he is bound to say, and that we should require him to say whether he got it; and then, if he did get it, what he did with it.

Mr. HUGHES. I desire to have the resolution under which the committee was appointed read, so that the whole subject may be before before the House.

[Cries of "No, no!" and "Object!"]

Mr. BOWIE. I hope the gentleman from Georgia will withdraw the demand for the previous question.

Mr. STEPHENS, of Georgia. I think enough has been said upon this subject, and I insist on the previous question.

Mr. MOORE. I desire, with the leave of the gentleman from Georgia, to say a few words.

Mr. STEPHENS, of Georgia. Well, I withdraw the demand for the previous question.

Mr. MOORE. I will renew it and I will occupy the time of the House for but a few minutes.

Mr. BOWIE. I believe I have the floor if the gentleman from Georgia withdraws the previous question; and I object to his farming it out to anyone else.

The SPEAKER. The Chair is of opinion that if the previous question is withdrawn absolutely by the gentleman from Georgia the gentleman from Maryland is entitled to the floor.

Mr. STEPHENS, of Georgia. I have withdrawn it.

Mr. BOWIE. Mr. Speaker, I regard this as a grave question. It involves, in fact, the rights—the private rights—of every citizen of this Republic. We are now called on to enforce the sovereign power of this House against a citizen who claims as against it his private rights; and I am for considering considerably the question of power between the sovereign and the subject. A citizen is brought up here before this House as the grand inquest of the nation, the great grand jury, in the exercise of a criminal jurisdiction, and is called on to answer certain questions. That you have a general inquisitorial power, under the Constitution of the United States, in regard to offenses against this House, no man can deny; and to that extent, and to that extent only, have you any jurisdiction whatever. It is said that a contempt of of this House has been committed by a contumacious witness. One exercise of that power, which is given to you by the Constitution of the United States, is to preserve your order and to punish offenses committed in the presence of the House, or the misbehavior of members. Whence is the power derived? What is the power at last? What is its nature? It is, simply, and nothing more nor less, than that power which belongs to the Parliament of England, and has been transplanted to our soil. It is the law of all public bodies. It is the necessary law, incorporated into our Constitution—the law of self-defense, simply, and nothing more. You have power to protect your majesty, if you choose to call it majesty. You have power to protect and defend yourselves

against disorder of every kind, and against violence of every kind. It is but the law of nature, the law of necessity, incorporated into the parliamentary law of England, and thus transplanted to our soil.

But if you attempt to go beyond that, you become usurpers and tyrants. You dare not go beyond that. Power is given to you to the whole extent of the purpose for which it is given. You propose to punish a man now for contumacy, for contempt of this House because he does not choose to answer a certain question. I assure you that upon every principle of common law his answers given to the committee of this House have purged him of contempt and you have no right whatever to pursue this subject any further.

“Question. Had you any funds placed in your hands, belonging to any of the manufacturers in Massachusetts, for the purpose of influencing members of Congress upon the passage of the tariff act?”

“Answer. I had not.

“Question. Were you ever authorized by any of them to make any promises of future benefits, in the event of the passage of that act?”

“Answer. I was not.”

“Question. Did you, after the close of the last session of Congress, receive from the manufacturers, either in Boston or elsewhere, any funds, money, negotiable securities, or anything of that sort, to be used in that way?”

“Answer. No, sir.

“Question. Did you at any time during the months of March or April, 1857, receive from Mr. Stone any negotiable securities, or money, or credits of any kind?”

“Answer. Never. Never for any such purpose as that, either directly or indirectly.

“Question. Did you receive at any time in the early part of March a considerable sum of securities for any purpose?”

“Answer. Never, for any purpose connected with the tariff, either to be paid to members of Congress, for the purpose of influencing their action, or to be paid to their agents.

“Question. Nor for their benefit?”

“Answer. Nor for their benefit, either directly or indirectly.

“Question. Nor in satisfaction of previous arrangements or promises?”

“Answer. Nor in satisfaction of previous arrangements or promises.”

Now, in the question and answer which follow, I say there is an admission, by implication, that he did receive money:

“Question. Did you receive any securities at any time during the month of March last, to the amount of \$30,000, at one time?”

“Answer. Not for any purpose of that sort.”

Now comes up the rights of the individual; now comes up the question between the Congress of the United States and the individual citizen of this country, as to their respective rights:

“Question. Did you ever for any purpose?”

“Answer. Well, that would be a matter of strictly private business; I did not for the purpose of influencing members of Congress, or their agents.”

Having acknowledged that he did receive this \$30,000, and having denied that it had been, in any form or shape, either directly or indirectly, used for the purpose of influencing the legislation of Congress upon the tariff, or upon any other subject before Congress—having denied that it had any connection with the Federal Government, it was all the answer you could require of him.

Now, sir, I do not know whether this gentleman is a lawyer or a physician. I do not know whether he comes within the pale of privileges. I do not know whether he has professional pretensions or not; but I tell you that there is a law equal to the common law—the law of honor, sir, of honesty and justice—a law which gives every man the right to take care of himself. If he has trespassed upon the criminal law, he is answerable to that. If he has made obligations which he has not discharged, the law will require him to discharge them. But that

there is any process of law by which a man may be compelled to disclose his own private relations, I will even deny.

Mr. Speaker, when upon oath this witness purges himself of contempt, your jurisdiction is gone; you can not lay your hands upon him; you have no more power than the courts of law have. The power which you can exercise is a legal one, and you can not make it more. If you compel him to answer further than he has answered, it would be tyranny. This committee was instituted for the purpose of investigating fraud. So conscious am I of my own integrity that I am slow to charge fraud upon others. Men are ruled by their dispositions. Some are well disposed, and some are evil disposed. The spirit of good and the spirit of evil rules the world. [Laughter.] I choose to belong to the spirit of good. [Laughter.] That very spirit of good would make me hate vice, fraud, and crime, in every shape.

It has got to be a sort of fashion here to get up investigating committees on every subject. We have had investigating committees our own members and our own officers. The other day an investigating committee was appointed on the late Doorkeeper. Now one has been appointed on the present Doorkeeper. It is a Rowland for an Oliver. [Laughter.] You have an investigating committee on the late Clerk, and I have not the least doubt that Mr. Allen may look out for an investigating committee upon him. [Laughter.] We have in consequence these sort of scenes—that side of the House is arrayed against this, and this against that. What is the effect? It is anything but creditable, and ought not gentlemen to be ashamed of themselves, when we come to look at the matter in serious soberness? [Laughter.]

Now, for the lack of something better to do, we must have a poor, unfortunate devil brought here, and the alternative presented to him either to divulge his private business or to go into imprisonment. He must tell about \$30,000 received from Lawrence, Stone & Co., when, by his answer, as every lawyer must know, he has ousted this House from propounding any further interrogatory. He has purged himself of contempt. The jurisdiction to which he was confined was the fraud and bribery and corruption of members and of outside persons in regard to the legislation of Congress; and when he declares, on his oath, that no money he ever received was intended to be applied to such a purpose, then the jurisdiction of the House ceases. That is the principle in reference to every court at common law. It is the principle in reference to every tribunal where justice is attempted to be enforced. You propose to go further. The chairman of a committee puts his opinion against the opinion of a contumacious witness. The witness does not disclaim, as I understand, that he received the money; but he does disclaim that he received it for any purpose connected with the jurisdiction of the House. What would you think of a court which, when a man was brought before it, would not listen to his affidavit and sworn protest? Is this House to say to this witness, "We have had a spite against you, and we must satisfy it?"

My friend from Ohio wishes to incarcerate this man because he has declined to answer questions concerning his own private business, and unconnected with the jurisdiction and the purposes of the investigation instituted by this House. It will not do for gentlemen to say that the witness has put his opinion against the opinion of the House; but in such a case he has the right to do so. If we were to compel a man, who has fairly answered all questions within the jurisdiction of the law, to divulge sacred matters of private business and confidential relations of the strictest character, then, indeed, we would be deserving of the

scorn and contempt and anathema of every honest and patriotic citizen.

Mr. Moore obtained the floor.

Mr. HUGHES. Will the gentleman yield to me that I may send up an amendment to be read for information?

Mr. MOORE. I yield for that purpose.

Mr. Hughes's amendment was read, as follows:

Whereas John W. Wolcott, a witness duly summoned before a select committee of this House, has appeared before said committee, and refused to answer and testify concerning matters pending before said committee: Therefore,

Resolved, That the Speaker of the House be requested to certify the facts to the proper district attorneys of the United States, according to the statute in such case provided.

Mr. MOORE. I know the House must be already fatigued——

Mr. STANTON. I wish to inquire of the gentleman from Alabama whether he gives way for the purpose of having that amendment offered?

Mr. MOORE. No, sir; merely to allow it to be read.

Mr. STANTON. I hope the gentleman will not allow it to be offered as an amendment.

Mr. MOORE. The gentleman from Georgia [Mr. Seward] asked several times why it was that the committee had not asked the witness what he did with the money? Again and again was the witness asked whether he received the money; and no direct response was given to that question; and it will be seen from the report that again and again he answered it evasively. When he was asked whether he had received the money which we had traced to his hands, he answered that he had received it for no such purpose as to influence the legislation of Congress. But the direct question whether he received the money, traced to his hands by other testimony, he directly and positively refused to answer. I can not believe that there is a member on this floor who will hesitate for a moment to come to the conclusion that this question was a pertinent, legal, and proper question. If he answered in the affirmative, the question would be followed by other questions. But unless this question be answered, the committee might as well suspend any further attempt or effort to elicit truth in this case, or to ferret out fraud, if fraud there be.

Mr. CLARK B. COCHRANE. I agree entirely with the gentleman from Alabama, that this was a proper question, and that the answer of the witness was not only an evasion but a volunteer statement. But I wish to inquire whether the witness did not distinctly refuse to answer the question?

Mr. MOORE. Most positively he did. He came in this morning with a written plea, in which he steadily refuses to answer, denying the pertinency of the question, and claiming that it was an inquiry into his private affairs.

Now, Mr. Speaker, there is not a member on this floor, acquainted with the simplest rules of evidence in courts of law, who does not know that this furnishes no excuse. It is no excuse for a witness who refuses to answer a question to say that he can not do so without betraying private confidence, or that it relates to his social transactions, as this witness says the question propounded to him does. Even in a criminal case it is no excuse for a witness who refuses to answer to say that the question relates to a communication made to him in confidence.

This has been decided over and over again, and is laid down in all the elementary works. And I say, then, that unless it is the will of

the House to clothe the committee with all legal power to ferret out this matter and to bring to light this fraudulent transaction, if there be a fraud, it should repeal the resolution under which the committee acts, and close the investigation here. I say, for one, Mr. Speaker, that unless the House sustains the committee in its efforts to bring to light these transactions, I shall ask to be excused from serving any longer as a member of the committee. It is an unpleasant position, at best. I will say for the rest of the committee as for myself, that we have endeavored diligently to bring the matter to light, considering it due to the reputation of the House, and due to the country, that this transaction, so publicly brought to view, should be investigated and the truth elicited. And I ask that, if the committee be not sustained in its efforts, I may be excused from further service on that committee, and some other member put in my place. I would suggest the honorable gentleman from Georgia [Mr. Seward] as my successor. But, believing that this House will sustain the action of the committee in the course it has thus far taken, and believing that the House has already grown weary of the subject, I move the previous question.

Mr. SICKLES. I hope the gentleman from Alabama will withdraw the demand for the previous question.

Mr. STEPHENS, of Georgia. I am very anxious that the gentleman from New York [Mr. Sickles] may have an opportunity of submitting his amendment to the House. Let it be submitted, and then let us have the previous question.

Mr. MOORE. I withdraw the call for the previous question.

Mr. SICKLES. Then I offer the following amendment:

Resolved, That the witness be again subpoenaed to appear before the committee, and that the interrogatory in question be again propounded to him by the committee, and if he shall not then answer the same directly and fully, that the Speaker, on the report of said committee to that effect, issue his warrant for the arrest of the witness, and that he forthwith be brought before the House, to show cause why he should not be punished for contempt.

Mr. Gooch took the floor.

Mr. MOORE. The witness has been already indulged for three days, and still he persists in not answering the question. I move the previous question.

The SPEAKER. The Chair understood the gentleman from Alabama as withdrawing the demand for the previous question, and recognized the gentleman from Massachusetts.

Mr. GOOCH. I do not desire at this moment to discuss the propriety of the question propounded to the witness, or the sufficiency of the answer. It seems to me that the proceedings which we have already had on this question fully demonstrate to us that we are not at this moment prepared to decide it. It is a question which, if we decide at all, we are to decide as judges, and we can only decide it with a full knowledge of all the facts. Now, I would ask if there is any man in the House who can say that he has fully considered the answer given by the witness, and that he is prepared to pronounce it insufficient?

Mr. FLORENCE. I say it.

Mr. GOOCH. How can any member who has only heard the answer read once or twice by the Clerk be prepared to pass on every part and portion of it? Is it to be presumed that a majority of the House are prepared to say that they have fully considered the question, and are ready to pass upon it as judges? It seems to me that we are not in a condition to decide this question now, and that the matter should be postponed till some hour to-morrow, so that each member may have an

opportunity of reading and fully considering the question and answer, and of deciding for himself as to the propriety of the one and the sufficiency of the other.

Mr. LOVEJOY. Will the gentleman allow me to ask a question?

Mr. GOOCH. I yield for that purpose.

Mr. LOVEJOY. I wish simply to ask if there is a single member of this House who is not convinced that that answer is a mere shuffling evasion of the whole thing; and are we to postpone a matter so simple till to-morrow, and then spend another day in its discussion? If the witness received the \$30,000, it is no great hardship for him to tell what he did with it.

Mr. GOOCH. I only yielded for an interrogatory, not for a speech. The gentleman from Illinois says it is a matter of slight consequence to the witness. I do not consider it a matter of slight consequence for a citizen to be arrested and brought before the bar of the House—and that, too, before the House has had full time to decide whether or not the question propounded is proper, or the answer that has been given sufficient.

I say that we, as judges, cannot decide the question as we should decide it, without a full knowledge of the facts.

It seems to me there is another question in connection with this matter. That question is this: Is it a contempt of this House for a witness to refuse to answer a question before a committee? It seems to me that, neither by parliamentary law nor by statute, is it a contempt of the House for a witness to refuse to answer a question propounded by a committee. It is the duty of the committee to report the matter to the House; and it is for the House to pass upon the propriety of the question and the sufficiency of the answer; and when the House shall have decided that the witness shall answer the question, or that the answer given is insufficient, then it is for the committee to call the witness again before it; and, if he again refuse to answer, after having been informed of the decision of the House, his refusal is a contempt of the House; and he should then be brought before the bar of the House, in order that he may there give the reason why he has not answered the question. The committee is in session at hours when the House is not in session; and, it seems to me, that the only safe rule which we can adopt is, that when a witness refuses to answer a question before a committee, the fact shall be reported to the House, and the House shall decide whether or not the question is a proper one. If the House decide that the question is a proper one, and the witness, on being again brought before the committee, still refuse to answer, then it is unquestionably a contempt of the House. But, it seems to me, there can be no contempt of the House before that. Can there be a contempt of a court of law, in refusing to answer a question, before the court itself has decided that the witness shall answer? Now, we, and not the committee, are the parties to determine this matter; and there can be no contempt of the House until the House shall have decided that question for itself.

Mr. BOWIE. Do I understand the gentleman from Massachusetts to say that the refusal of a witness to answer a question asked by a committee of the House is not a contempt of the House, because it is only a contempt of a committee? Does he not consider that a committee of this House is an emanation from the House, designated for useful purposes?

Mr. GOOCH. I will answer the question of the gentleman from Maryland by saying that I am informed by a gentleman near me that the House has decided that a refusal to answer a question asked by a committee is a contempt of the House. If it has been so decided, of course

I yield to the decision. But if we were now to establish a precedent, if we were now to settle the question whether or not a refusal to answer questions asked by a committee is a contempt of the House, I should say that I hoped the House would not come to the decision suggested, but to the opposite decision. I believe in protecting the rights of citizens. I would not assume that the refusal of a witness to answer a question asked by a committee is a contempt of the House; because I think that the witness should have the right of appeal from the decision of the committee to the House. The witness may well say to the committee, "I refuse to answer your question; but if the House decide that it shall be answered, then I will bow to the decision, and will be ready to answer the question."

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Mr. GOOCH. I was saying that, if we were now to establish a precedent in this matter, we should give it such time and attention that we shall be willing hereafter to abide by the decision which we shall make in this case. I think that, if the matter were fully discussed and considered, it is more than probable that the House would come to the conclusion that we can decide this matter properly only by first taking up the question propounded by the committee, and considering whether it be proper or not; and if we come to the conclusion that the question is a proper one, then consider the answer which the witness has given; and if we decide that the answer is not sufficient, direct the witness, through the committee, to answer further; and, if he then refuse, bring him before the House to answer for his contempt.

It seems to me that we are in more danger of sacrificing the dignity of this House by moving hastily and inconsiderately in this matter than we are by taking the time necessary for us duly to consider the question. When we have fully considered this question we can then so decide it as to establish a precedent by which we shall be willing to abide. As I promised the gentleman from Alabama, I renew the call for the previous question.

The previous question was seconded; and the main question was ordered.

The question recurred upon the following amendment to the resolution of the committee:

Resolved, That the witness be again subpoenaed to appear before the committee, and that the interrogatory in question be again propounded to him by the committee; and if he shall not then answer the same directly and fully, that the Speaker, upon report of said committee to that effect, issue his warrant for the arrest of the witness, and that he be forthwith brought before the House to show cause why he should not be punished for contempt.

Mr. PHILLIPS. I hope that will not pass.

Mr. STANTON. The witness has had time. He has consulted counsel. He has uniformly declined to answer the question.

The amendment was rejected and the resolution was then adopted.

FRIDAY, FEBRUARY 12, 1858.

* * * * *

The Speaker reported to the House that the Sergeant-at-Arms made the following return in reference to a resolution adopted yesterday:

In obedience to the written warrant, I arrested the within-named John W. Wolcott at his lodgings in this city (at Willard's Hotel) this 11th day of February, 1858.

And now, February 12, 1858, I produce the within-named John W. Wolcott in person at the bar of the House of Representatives to answer as within ordered.

A. J. GLOSSBRENNER,

Sergeant-at-Arms, House of Representatives, United States.

To Hon. JAMES L. ORR, *Speaker of the House of Representatives.*

The warrant of the Speaker is as follows:

By authority of the House of Representatives of the United States.

To A. J. GLOSSBRENNER, *Sergeant-at-Arms of the House of Representatives*:

You are hereby commanded to arrest John W. Wolcott wheresoever he may be found, and have his body at the bar of the House forthwith, to answer as for a contempt in refusing to answer a proper and competent question propounded to him by a select committee of the House of Representatives, in pursuance of the authority conferred by the House upon said committee.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 11th day of February, 1858.

[L. S.]

JAMES L. ORR, *Speaker*.

Attest: J. C. ALLEN, *Clerk*.

Mr. STANTON. I move the adoption of the following resolution:

Resolved, That John W. Wolcott be now arraigned at the bar of the House, and that the Speaker propound to him the following interrogatories:

Question. What excuse have you for refusing to answer the question propounded to you by the select committee of this House, before whom you were summoned to appear, as to whether you had received any sum of money from Lawrence, Stone & Co., sometime in March, 1857?

Question. Are you now ready to answer that, and all proper questions which may be propounded to you by that committee?

And that said John W. Wolcott be required to answer the same in writing, and under oath.

The resolution was adopted.

The Sergeant-at-Arms appeared before the bar of the House and announced that in obedience to the order of the House he presented John W. Wolcott in person.

The SPEAKER (to Mr. Wolcott). I have been instructed by the House of Representatives to propound to you certain interrogatories.

The Speaker then read the questions of the resolution just adopted.

The written answers of the witness were sworn to before the Speaker, and were read, as follows:

Mr. Speaker and gentlemen of the House of Representatives: I am in your presence, in obedience to an order of the House of yesterday, to answer for a contempt alleged to have been committed by me in declining to answer otherwise than I did a certain question propounded to me by your committee.

Assuring the House, as I do, in all sincerity, that I did not design, nor suppose that I could be thought guilty of, a contempt of the House, or of its committee, I respectfully request of the House to give me time until Monday to purge myself of the alleged contempt, and to place my conduct in this particular fairly and fully before your honorable body. To do this I need the assistance of counsel; and the indisposition of my senior counsel, together with a pressing engagement in the Supreme Court of the United States, he has assured me will render it impossible for him to afford any professional aid this week.

I hope, as a citizen of our common country, never before charged with violating any law, and conscious of no intended offense to the House or its authority, and believing that I will be able to justify myself in the well-considered judgment of this House if the time asked is allowed me, that the indulgence now respectfully asked will be granted.

J. W. WOLCOTT.

Subscribed and sworn to before me, February 12, 1858.

JAMES L. ORR, *Speaker*.

Mr. STANTON. I move that the witness have until 1 o'clock on Monday to make his answer to the interrogatories propounded, and that meantime he be recommitted to the custody of the Sergeant-at-Arms, and have the benefit of counsel in preparing his answer.

Mr. JOHN COCHRANE. It is, perhaps, an ungracious task to interpose objection to a request for delay, and they must certainly be very remarkable circumstances which would authorize or impel any gentleman to rise in his place to make such an objection. But under well-considered reflection upon the circumstances which surround this case,

and those which have preceded the introduction of the witness here this morning, I can not remain quiet without entering my protest against this delay. If there were reason for it, I should be among the first to comply with the request; but I see no such reason; on the contrary, the record displays good reason for opposition to the request. Questions have been propounded to the witness. There is yet no answer. A request is made for postponement, that a day may be given to the gentleman alleged to be in contempt, for answer and purgation; and the cause of that delay is, that his counsel, his senior counsel, is engaged in professional duties before the supreme tribunal of the United States. And yet the advice of that senior counsel was obtained and presented to us here yesterday; that advice was fully discussed; and in respect to its nature, the House deliberately came to the conclusion that there had been a contempt of its authority.

In this connection I may ask at the proper time that the answer of the witness, reported to us yesterday, be read again to the House. If I recollect aright—and I am sure that gentlemen do not forget what occurred then, or what is indited there—the witness stated that upon consultation and receiving advice from two gentlemen learned in the profession of the law, he was counseled that the question itself was not pertinent to the inquiry or within the scope of the authority of the House of Representatives. If this gentleman has taken that position—if he then proffered that issue to us which we then and there accepted, I ask what reason is there for any delay now, when it is requested by the gentleman to enable him to seek further advice in respect to the issue which he then and there proffered to us?

Now, if we are engaged in a transaction which is surrounded by dignity; if we are engaged in the pursuit of an alleged culprit; if we are determined to administer with caution, but with due severity and promptitude, the punishment proper for the offense committed, let us proceed in order; and I ask, therefore, of the House, that before voting on the motion of the gentleman from Ohio, we may consider what is the position of the witness before us, and whether there is any propriety in granting him further time to review the position which he took yesterday, under the advice of that counsel of whose absence he now complains. I ask that his answer to the committee may be read from the Clerk's desk.

Mr. CLEMENS. Mr. Speaker, I concur generally in the views expressed by the gentleman from New York, on the question now presented for the consideration of this House; and in order that we may know precisely the issue presented for our determination, I desire to read that portion of the answer of the witness which was laid before the House yesterday. This question was propounded to the witness:

“Question. Did you receive from the firm of Lawrence, Stone & Co., sometime in March last, a sum of securities or money, of the amount of \$30,000, more or less?”

Now, what does the witness answer? He says:

“Answer. I did not, in March last, nor at any other time, receive from Lawrence, Stone & Co. any money or securities of any amount, for the purpose of influencing, or to be used in influencing, directly or indirectly, the action or vote of any member or officer of the present or the last Congress upon the tariff or any other act or measure considered by Congress, or before it, or contemplated to be before it; nor did I ever pay, or promise to pay, directly or indirectly, any money or pecuniary consideration to any officer or member of any Congress for his vote or services in the passage of, or to influence his action in relation to, the tariff or any other law; nor did I ever give any money or securities to any person for the purpose of being paid to any officer or member of Congress for his vote or influence, directly or indirectly, upon any act under the consideration of Congress; nor have I any knowledge that any such act or thing was done by any other person.”

Now what does he still further say, sir?

"I am advised by my counsel, Messrs. Reverdy Johnson and James M. Keith, whose opinion I have obtained since the present question was propounded to me, that the above answer is a full answer to everything which such a question may involve, falling under the jurisdiction of the House of Representatives, touching the inquiry which the committee are constituted, and could only be constituted, to investigate. And, acting under the same legal advice, I most respectfully submit that the question, in its present form, is not of itself 'pertinent' to the only inquiry which the House, in this instance, has a legal right to institute.

"If, acting under such a power, a committee of the House can compel a witness to answer such a question as this except by saying that he did not use at all, directly or indirectly, any money, coming from any quarter, to influence directly or indirectly the action or vote of any member of Congress, and that he has never paid any money to any one for such a purpose, and has no knowledge that any money was used for that purpose, or any other illegal purpose, regarding Congress, or any of its officers, I respectfully submit that it gives to the committee or the House the right to inquire into my private business and social relations, which, except so far as they may tend to prove the alleged improper influencing of members of Congress in some official duty, is as much beyond the jurisdiction of the House, and, of course, of the committee, as it would be beyond their power to investigate the private business and social relations of any other citizen, without such a charge or implication of corruption, or attempt to corrupt Congress or any of its members, having been made."

Now, sir, what is the issue which he presents to the House in that answer? Upon full consultation with his counsel, as he himself alleges, he prepared an answer which was reduced to writing and which I have read to the House. To-day, in order to purge himself of the contempt of which he says he is unconscious, he desires until next Monday to have still further benefit of the counsel of Messrs. Johnson and Keith, both of whom he had consulted before the obnoxious answer was given.

Is there any reason, under the facts presented, to give to this gentleman, until next Monday, time to deliberate upon a matter upon which he alone is in full possession of the information required? He is either guilty or not guilty of using this money for improper purposes. He acknowledges that he has received the money, as I understand his answer. He acceded indirectly to the charge that he had received \$30,000 from Lawrence, Stone & Co. But when the question is put directly, whether he received the money, he evades the answer by saying that he received the money for no such purpose. Now that he did receive the \$30,000, he indirectly admits in his answer, because he acknowledges that he did not receive it for the purpose as alleged by the committee; indirectly admitting that he had received that sum, but denying that he applied it or used it for the purpose which the committee was called upon to investigate.

Now, sir, he, under his answer as presented to the House, is the only competent person to lay the truth, as it is, before the committee. Why have the benefit of counsel when he had it before? Why have the benefit of Messrs. Johnson and Keith in order to chaffer about the phraseology to which he may reduce his answer? If he is not guilty, as he himself alleges, of having used this money in any manner, either directly or indirectly, for influencing legislation in Congress; if he does not know for what purpose it was used; if he stands before the House and country purged of all attempt directly or indirectly to influence the legislation of this House, or to influence the vote of any member of this House, or of the last Congress, why can he not come up and state so plainly, distinctly, directly, and honestly? Why have time to deliberate upon a matter in which the truth is only required to be told? If he did not intend to place himself in contempt of the House and its authority, it is very easy for him to go before the committee, and if he knows nothing about this money, how it was used, how he got it,

or how he disposed of it, it is very easy to say so; but it is very remarkable that \$30,000 could have come into his possession without his knowing why he received it, or without his retaining a single voucher in regard to its disposal, or knowing into whose hands it went. It has been proved, and virtually admitted by him, that \$30,000 was paid by Lawrence, Stone & Co. into his hands. What disposition was made of it? If he has not disposed of it at all, but still retains it, that is a matter between Lawrence, Stone & Co. and himself to settle. But if he has paid it into the hands of some one, and does not know for what purpose, then it is the right of the committee to pursue that money into whosoever hands it passed.

Under these circumstances, while I am willing to extend to this gentleman, and every other gentleman similarly circumstanced, every possible liberality and magnanimity, and while I am not disposed to use the power of this House against any man placed in its power, yet under all the facts of the case as they have been presented under the answer of Mr. Wolcott himself, it is perfectly competent for him to appear before the committee to-morrow and answer the question truthfully and magnanimously as a man; and to do that he does not require any consultation with his counsel, Messrs. Johnson and Keith.

Mr. CLARK B. COCHRANE. I entirely agree with what appears to be the sense of the majority of the House, that the question propounded to this witness was a proper one, and that the committee were entitled to a direct and categorical answer thereto. The House yesterday pronounced that this witness was in contempt, and he has been arraigned this morning to answer to that charge. In this written answer he applies to this House for time to purge himself from contempt until Monday next. He alleges, as a reason for asking this indulgence of the House, that one of his counsel is sick, and the other necessarily occupied in other professional engagements.

Now, sir, it appears to me that there is nothing unreasonable in this appeal to the House upon the part of this witness. There is no principle involved in granting this indulgence. My own judgment is clear that the question was a proper one, and that the House will feel itself called upon to compel him to answer the question directly. The position which the gentleman occupies is not an enviable or pleasant one. It is one of great embarrassment. He has been arrested here, charged with a grave offense against the House. Now, sir, shall we deny to him the advice of counsel—a right granted to every criminal arraigned before your judicial tribunals? The right to the advice of counsel is a constitutional right, guaranteed to every man throughout the region of the common law. It may be that both the witness and his counsel desire to reconsider this case, to reexamine this question, and to see whether or not the advice given to the witness on the previous occasion was safe and satisfactory. I am in favor, therefore, of allowing him this further time for the purpose of purging himself from the contempt under which he stands arraigned.

Mr. DAWES. This witness brought before the House is a citizen of Massachusetts. I have never had the pleasure of seeing him before to-day, nor did I ever see or know any member of the firm of Lawrence, Stone & Co. I am not here in his behalf, or in their behalf; nor am I here to interpose any obstacle to any investigation of the charges brought against the members of the last House, or of this House, or its officers. If any money, from any source, has been used to corrupt any man in high place, I will contribute what little aid is in my power to ferret it out. Sir, the question before the House is not

whether the witness has answered truthfully or not, for if he has committed perjury, he is to answer for that to another tribunal.

The question before the House yesterday was, whether the committee had propounded to him a proper question; and also whether he had answered that question in full? We differed here yesterday about the record that the committee had made up. Some of us thought that he had not answered the question properly—that he had not answered it in full—that he had not admitted that he had received that money; while others of us were just as certain that he had admitted its receipt. I observe that members here differ this morning on that point. I observe that the chairman of the committee, when the gentleman from Virginia [Mr. Clemens] declared a moment ago that the witness had answered that he had received this money, shook his head, and said he had made no such answer. A record has been made here; and we can not tell, from the record itself—we who are here called upon to pass as judges upon this question—whether he has answered in one way or the other. It is true that he said he made that answer under the advice of counsel. It is true that the House declared yesterday that by that answer he had committed a contempt of the House; and he is brought here to-day to purge himself of that contempt. And what does he say? He says that he was not conscious of having committed any contempt. It was not his intention to have committed any contempt of this House or its committee. It was the furthest thing from his mind to have done so.

The House having declared that the answer he made in good faith, as he says, intending to answer all proper questions of the committee of this House, is a contempt of this House, he asks you to give him until the next day this House meets to prepare an answer, which will fully purge him of this contempt. He asks for time to purge himself of contempt; and gentlemen rise up here and say that it is inconsistent with the dignity of this House to give him one single day to prepare his answer. I was astonished to hear from the gentlemen from New York [Mr. John Cochrane] that this House owed it to itself to give no time to this witness to answer. I have not forgotten that a few days ago a citizen of New York was brought before this House, in contempt of its precept, who answered under oath that he took advice of counsel before the warrant of the Speaker reached him; and that his counsel advised, and he also entertained the idea, that this House had no authority even to bring him before it; and that it was his intention to have contested that question before the legal tribunals of the city of New York before you got him here; but that the officer of this House had taken him with such hot haste from the city of New York that he had not time to carry out the settled purpose which he had come to under the advice of counsel. He came here with this sworn answer. This was the manner in which he undertook to purge himself of contempt; and my friend from New York rose here and begged the House to give him another day to take back and amend that answer, and purge himself more fully of this contempt; and not a man objected to it, as I recollect.

MR. JOHN COCHRANE. I think the gentleman has entirely mistaken the circumstances under which I rose on that occasion, if I understood them rightly, and I believe I did. The witness had not said, in his answer, that he made that specific answer by advice of his counsel. He did state, as I understood, and that was the presumption upon which I proceeded, that he acted upon the advice of his counsel; that the excuse which he possessed was full and sufficient. His answer, in respect to the insufficiency of the authority of the House, as I

understood and believed it to have been, was, that his own private opinion was that the House had no authority to force him to come here.

Mr. DAWES. I understood the witness, and I understood my friend from New York, to say to the House that the witness, in whose behalf he rose to ask for time, came here on the advice of counsel, and said that the answer which he gave under oath was a sufficient one.

Mr. JOHN COCHRANE. It is upon that point I base my position—that the witness here has made a blow to precede the threat; that having taken the advice of counsel, whose absence he now complains of, he comes into the House with his red right hand, and defies its authority. It is upon that ground, and that alone, that I have interposed an objection to his request for delay.

Mr. DAWES. I so understood the gentleman. I understood him, a few days ago, to declare to the House that it was but just and fair to grant a witness, in precisely the same category, a day's time, not only to make a further answer, but to take back what he had said by the advice of counsel. The only difference is, that the counsel of the witness, a few days ago, was in New York when he gave this advice, and the counsel of this witness—I do not know where they live; I never saw them any more than I ever saw this witness before to-day.

I do not care what this witness is charged with. He comes here, and, under oath, says that he can not answer fully; that he can not purge himself of this contempt unless he has the advice of counsel, and that he can not avail himself of that advice to-day. I want to know on what charge in your district court, or any criminal court in this country, a man can be arraigned on the very day upon which he is arrested, and brought to answer upon an indictment, when he comes with an affidavit that he can not be heard in person, advisedly; that he can not be heard by counsel without one day's delay? Who suffers by this delay? In what critical condition are we at this moment? Is the dignity of the House so far gone that it will not last a day? Are we in such peril from this witness, or from any source, that we cannot give what we accord to the meanest criminal upon God's footstool—a day to answer to our charge! What is the occasion, Mr. Speaker, of this hot haste? I wished for time yesterday; I tried to find the commission under which this committee acted; I applied to the chairman of the committee, and I applied to other members of the committee, and at the Clerk's desk. I would like to know myself, to-day, the force of that commission. I do not ask delay in behalf of the witness merely—I ask it for myself. I am a judge here, and I am to pass upon this question as a judge. I want time myself. I ask for it in my own behalf, as well as in behalf of the witness. The witness comes here under these circumstances, and respectfully declares to the House, on his oath, that there was no intention on his part to commit a contempt; and that if he has committed a contempt, he will purge himself from it if we will allow him one day's time. And now, I ask, will any member say that it is inconsistent with the dignity of the House to grant this much delay?

Mr. STANTON. If I had supposed there was the remotest probability that this motion would lead to any discussion, I should have moved the previous question when I made the motion. But it seemed to me that when a party is arraigned here for a contempt, and stands in the light of a criminal, and not of a witness, subject to have such punishment visited upon him as the House in its wisdom may see proper; when he is arraigned here and interrogatories are propounded to him for

the first time, and he is required to answer them in writing and under oath, it is a matter of absolute necessity that he should have some time, however short, to prepare his answers. Now, we shall probably not sit to-morrow. I supposed, therefore, that the request was reasonable that he should have until 1 o'clock on Monday to prepare his answers. As he sets up some claim of constitutional right as a citizen, and desires to test the power of the House by a judgment of the courts, I see no reason why he should not have the opportunity and the benefit of counsel to do it. I therefore move the previous question, and I hope the House will sustain it, and let us get rid of this business at once.

The previous question was seconded, and the main question ordered, and under its operation the motion of Mr. Stanton was agreed to.

MONDAY, FEBRUARY 15, 1858.

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The SPEAKER. The House on Friday last, when the witness, John W. Wolcott, was before it, adopted a resolution giving him till Monday at 1 o'clock p. m., to file his answer to the interrogatories propounded to him, and that in the mean time he remain in the custody of the Sergeant-at-Arms, with the privilege of seeing counsel. The Sergeant-at-Arms returns that he has again present, within the bar of the House, the above-named John W. Wolcott, to answer as ordered. And the witness, John W. Wolcott, has presented to me the following answer to the interrogatories:

Mr. Speaker, and gentlemen of the House of Representatives: I thank you for indulging me until to-day to answer for the contempt with which I am charged, and it will be my effort not to abuse the indulgence by trespassing unnecessarily upon the time or patience of your honorable body. I shall confine myself to what I hope will be considered as condensed a defense as may be consistent with a perspicuous presentation of it. Before proceeding, I repeat what I have before said, that nothing was farther from my intention, in any one of my answers to the several questions put to me by your committee, than to condemn its authority or the authority of the House. If I have done so in the reply which I gave to their last interrogatory, it is to be attributed solely to an error of judgment as to my rights, in which judgment I had the mature sanction of my counsel, gentlemen who, all must know who know them at all, are as incapable of advising a course derogatory to the legal authority of the House or of its committee as any honorable member on this floor. I therefore, in the most solemn manner, disclaim the remotest design to commit in what I have done or failed to do as a witness before your committee, or in what I am about to say now, any offense against the authority of the House or its agents.

To make my defense the more readily comprehended, a preliminary statement is necessary. On the 15th of January last the House adopted the following resolution:

Resolved, That a committee of five members be appointed to investigate the charges preferred against the members and officers of the last Congress, growing out of the disbursement of any sum of money by Lawrence, Stone & Co., of Boston, or other persons, and report the facts and evidence to the House, with such recommendations as they may deem proper, with authority to send for persons and papers."

By virtue of this resolve the committee before whom I have been was appointed, and its authority remains exclusively such, and no other than that resolve conferred. The commission then is to "investigate the charges preferred against the members and officers of the last Congress, growing out of the disbursement of any sum of money by Lawrence, Stone & Co., of Boston, or other persons," etc.

What the charges were the resolve does not state, except that they grew out of money disbursed by Lawrence, Stone & Co., or other persons. But, as no conduct of members or officers, save official, is within the power of the House, the charges must have referred to corruption consummated, or attempted upon such official conduct, in the disbursement of money, by the Boston house or by other persons. It would seem then to be clear that the powers of the committee are limited to inquiries touching such imputed disbursement, and that no question can be asked and no answer exacted except such as tend to ascertain that fact, namely: was such money disbursed for the purpose stated, or was it attempted to be so disbursed? I am far from admitting the authority of this House to institute the latter inquiry. The

Congress, on whose members and officers the alleged attempt is supposed to have been made, no longer exists, and whatever illegal purpose existed as against them, and whatever illegality there may have been in their conduct, the offense is to be answered for before the ordinary tribunals of justice, and with all the protection to innocence which the policy and wisdom of our laws afford, and with all the means they furnish to establish guilt, if guilt there be. Congress, as the grand inquest of the nation, has no power to investigate into the conduct of the citizen, or to punish him, or to direct criminal proceedings against him in the courts, except as to the first case, when the official integrity of its members is involved; and in the other two instances, when a witness is before them or a committee, in a matter within their jurisdiction, and refuses to answer a pertinent question. In such cases they can punish by arrest during the then session of the House; and under the third section of the act of the 24th of January, 1857, they can also "hand the witness over to the district attorney of this District, whose duty it is to bring the matter before the grand jury for their action."

But this limitation on the power of Congress, or either of its Houses, is further apparent from these considerations. There is by the Constitution (2d clause, 6th section, 1st article) an express power granted "each House" to "punish" its members for disorderly behavior, and, with the concurrence of two-thirds, to expel a member. The insertion of this authority, on principles of construction coeval with the Constitution, it was thought negatived all power to punish in other cases, and consequently denied the power to punish a witness or other party for what in England or in the States would be adjudged and punished as a contempt. But this view was held to be, and, as I am advised, it clearly was, too limited. The power, though not granted and not impliedly within the one actually in terms granted, was necessarily incident to the just authority of Congress, and important to its purity and consequent usefulness to the country. The Supreme Court of the United States so held, in the case of *Anderson v. Dunn*. (6 Wheaton, 204.) But because as ruled in that case it exists by implication only, it is not to be esteemed a "substantive and independent" power, "but auxiliary and subordinate." The purity of Congress, the official integrity of its members, are necessary to the faithful and satisfactory discharge of their duty to the country, and all-important to the interests of the people. The authority to examine into all imputations upon such purity and integrity must therefore exist, and, not being in terms conferred, is to be implied. But the implication does not bring into existence "a substantive and independent power," but one altogether "auxiliary and subordinate." The conclusion, I am advised, would seem to be clear that no authority can be implied to examine witnesses in such a case as that, and the one before you is only of that class, except to facts fairly calculated to ascertain the truth or falsehood of the charge under investigation. that is to say, to propound only such questions as may be *pertinent* to the inquiry—

The act, too, before referred to, of January 24, 1857, in words, so limits the authority. It provides only in its first section—and consequently the third section is to be so limited—for the case of a witness who, appearing, shall refuse to answer any question *pertinent* to the matter of inquiry under "consideration before the House or committee by which he shall be examined," etc. Before attempting to apply what I have so far stated to the charge against me, and with all becoming deference to the House, I hope to be excused for adding, as bearing further on what I am about to submit, that by the first clause of the first article, and evidently designed to exclude all other legislative powers, those vested in Congress are declared to be the "legislative powers *herein granted*." These, and these only, and such as are necessary and proper to their beneficial discharge, are all the legislative powers conferred; and so solicitous was the vigilance and far-seeing sagacity of the great and patriotic men of the day, that they were not satisfied to have the powers granted, in the manner granted, to stand as the only security that in progress of time they should not be enlarged by construction. By the ninth and tenth articles of the amendments to the instrument, and in plain words admitting of no misapprehension, they provided:

First, that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others *retained by the people*."

Second, that "the powers not delegated to the people of the United States by the Constitution, nor prohibited by it to the States, *are reserved* to the States respectively, or to the people."

With these remarks I proceed with my justification.

I am advised, Mr. Speaker and gentlemen, that the effect of the order under which I am in your presence, is to place me in the character of a criminal, according to precedent in like cases, adjudged to be such by the House, without giving me in advance an opportunity of being heard. And as such judgments, if enforced without a hearing of the party involved, are not consistent with the justice or the genius of our institutions, I have now the same right to show cause against the legality of the one in my case, that I would have had if I had been heard in advance.

Before some tribunals it is possible that an expressed opinion can not be changed, but I have no fear of such an obstacle in this instance. Fresh from the people, and sooner or later to return and be of them, it can not be that a judgment, though formed with perfect sincerity of conviction, but, from the circumstances attending it, under the influence of more or less of haste or excitement, if, upon a more mature consideration, it shall appear wrong, will, in the slightest degree, from mere pride of opinion or other motive, constitute the least impediment to your now correcting the error; and I do not therefore fear, if I can satisfy you of the error, or make you entertain a reasonable doubt of it, but that you will, with the liberality, magnanimity, and candor which ever belong to an enlightened tribunal, make the correction, and, by so doing, do justice to a citizen.

To this task I now more directly proceed.

The power of the House and the committee being limited to the investigation of the charges preferred, according to the terms of the resolution of the 15th of January, and necessarily and constitutionally so limited, it must be admitted that the authority to examine witnesses is confined to such questions as, in the language of the act of 24th January, 1857, are *pertinent* to the matter of inquiry. A question, therefore, which, in its form, shall seek information foreign to the inquiry, the committee have consequently no right to propound. Nor is a refusal to answer such a question illegal.

A want of jurisdiction in this case, as in the case of other tribunals, is a want of rightful power, and if assumed, in the eye of the law renders everything that may be done simply null and void.

For the same reason a question which, if answered, may, if followed by pertinent questions, serve to elucidate the authorized investigation, the witness is bound to answer. But if the answer which he does give anticipates all other legal questions which can grow out of it, and shows that he can give no other response to that or such other inquiries, except such as will disclose matters of a private nature, touching his own individual business or rights, or the private business or rights of other parties, and in no way bearing on the only investigation which the committee is empowered to notice, the legal obligation of the witness is fulfilled, and the power of the committee is in that particular exhausted. It is a grave error to suppose that the power of such a committee gives the right to put to a witness any and every question which they may suppose proper. Such a principle would potentially vest in such a body unlimited and inquisitorial authority. The true rule, and the limit of the power is found in the rule, that the question which the witness is bound to answer be *pertinent* to the subject to be investigated. It is a refusal to answer such a question as that—a pertinent one—that the act of January, 1857, says is a contempt to be punished by indictment. To constitute either a contempt or a misdemeanor, under that law, the *pertinency* of the question is as vital as the refusal to answer. It is unsound doctrine, that it is immaterial whether the question be proper or improper. If it be improper in a legal sense, because not pertinent to the subject which the committee are only authorized to examine, then it is as unobligatory upon the witness as a question propounded by the members of the House without any authority at all from the body.

The assumption that any question that may be asked by the committee, under the authority of the House, is to be answered, is true; but then the right to propound a particular question does not exist, if such question is not within their authority; and such is, as I am advised, the nature of the one which was put to me in this instance. A different rule would necessarily make a committee absolute and supreme, and render their judgment, thus given solely by virtue of a delegated authority, infallible and conclusive. Every question they should propound, simply because they did propound it, is to be held a pertinent one, which the witness is bound to answer; and when his refusal is reported to the House, or he is proceeded against by indictment under the act of 1857, the judgment of the committee is to be conclusive alike upon the House, the court, and the jury. I submit, under advice, that such a principle is at war with the well-settled rights of the citizen. If I am correct thus far, then the only matter to be considered is, does the answer which I did give to the last question put to me by the committee contain all the information which their limited authority gives them the right to ask of me? By their report to the House it will be seen that a number and a variety of antecedent questions were propounded, to all of which I made prompt and apparently satisfactory replies. I had informed them, in response to their questions—

First. That no funds had been placed in my hands by any of the manufacturers of Massachusetts, for the purpose of influencing members of Congress upon the passage of the tariff act.

Second. That I was never authorized by any of them to make any promises of future benefits in the event of the passage of that act.

Third. That I did not receive, after the close of the last session, from the manufacturers of Boston, or elsewhere, any funds, money, negotiable securities, or any-

thing of that sort, to be used in that way—that is to say, in influencing members of Congress, as asked in the first question.

Fourth. That I did not, at any time during the months of March or April, 1857, receive from Mr. Stone any negotiable securities or money, or credits of any kind, for any such purpose, either directly or indirectly.

Fifth. That I did not receive at any time in March, 1857, a considerable sum of securities, for any purpose connected with the tariff, either to be paid to members of Congress for the purpose of influencing their action, or to their agents.

Sixth. Nor for their benefit, either directly or indirectly.

Seventh. Nor in satisfaction of previous arrangements or promises.

Eighth. Nor any securities at any time during March, 1857, to the amount at one time of \$30,000 for such purposes.

Ninth. These several replies having been given, and apparently considered sufficient, the committee then put to me the question which brings me before you.

The House can not but perceive that nearly all the previous questions look to the influencing, by money or its equivalent, in the passage of the tariff act, or by promises of doing so at a subsequent time, the action of members of that Congress on that act. My private business, having no connection with such a charge, was not inquired into. From whom I may have received funds, and on what consideration, and for what purpose, other than the imputed illegal purpose, does not, so far, seem to have entered into the design of the committee.

Having negatived every previous inquiry bearing on the development of the illegal purpose charged, and, in terms as strong as I could use, disclaimed the receipt of funds from any quarter, to be applied directly or indirectly at once, or by promise of future appliance, or benefits to the alleged improper influencing of the members of that Congress, the committee then submitted to me this question: “Did you ever receive the \$30,000 before mentioned ‘for any purpose?’” This I at once declined answering until I could consult counsel, and upon the ground that it included a matter of strictly private business, but again added that no such sum was received for the purpose of influencing members of Congress or their agents. The permission for counsel was granted; and, before I left the room, the question in the form reported to the House was placed in my hands. It is in these words:

“Did you receive from the firm of Lawrence, Stone & Co., some time in March last, a sum of securities or money to the amount of \$30,000, more or less?” The words “for any purpose,” which formed a part of the question which I had first declined to answer, as first stated, are not here added. But it is evident the committee designed to get an answer without regard to the purpose, or object, or consideration, for the receipt of the alleged sum. What my answer was to the question in this form is now known to the House; and the inquiry is, is it such an answer as I am only legally bound to make?

I suppose that no one will for a moment maintain that, under our form of government, with the limitations implied and expressed upon its powers, legislative, executive, and judicial, and the express reservation to the States, or the people, of all rights and powers not enumerated in, or delegated in the United States, by the Constitution, it is in the power of Congress, or either of the other departments, to investigate the social relations and private business of a citizen, having no reference at all to or connection with the powers conferred upon them respectively. The right to hold these sacred from governmental investigation or power is, in very terms, expressly secured by the ninth amendment, and vested in the citizen. The power, too, over this is also by the succeeding amendment in like manner reserved.

In regard, then, to my strictly private rights, I am in no measure responsible to Congress. After, then, the answers which I had given to previous interrogatories, and, the one I gave to this, denying expressly any purpose to influence Congress, or any of its members, by improper means in the passage of the tariff act of 1857, or any other act of Congress, in money or securities, or any such actual or attempted influence, I am asked whether I received the money from the parties named “for any purpose?”

Having denied all illegal purpose in its receipt, or its subsequent illegal use by Congress or others, the inquiry necessarily is, did you receive it for a legal purpose? And that is to be followed by asking what that purpose was, and how did you, in fact, appropriate the fund? Did you, in the execution of your legal purpose in receiving it, enter into private and business arrangements with the parties having no connection with the charges under investigation, causing you to pay to them a part of, or all of, the fund? If this is not to compel me to disclose my individual and private transactions, to lay before Congress and the country what these were, I am at a loss to conceive what private transaction in such a case is free from Congressional investigation. It is said that it may be true that I did not receive the fund in question for the illegal purpose charged, or to use it directly or indirectly, or pay it to other private parties, with a view to such purposes, and yet it may be found that such parties did it with that view. The error, I respectfully submit, of this position

is, that it seems to assume as true the fact that that sum, in whole or in part, was thus illegally appropriated. It assumes as clear that the charge the committee are to inquire into was truthfully made, and that the corruption of the members of the last Congress was effected by means of this \$30,000. I am advised that these assumptions are not such as the law makes. The charge, if established, is a crime; and the presumption before proof is always of innocence.

The House, I submit, will also see that in the several answers I have given to those prior questions, and in the one to the last interrogatory, I have not testified to matters of opinion or in relation to matters, on which, as opinion, the committee or the House might differ with me, but to matters of fact exclusively. The purpose with which money is received is a fact; its intended appropriation is a fact; its actual appropriation is a fact; the denial of all knowledge of appropriation of it by others is a fact. If as to one or all of these I have testified falsely, I have forsworn myself, and may be indicted and punished for perjury. In no part of such testimony is there anything of opinion at all; the whole refers to matters of fact and nothing else. Those who may differ with me as to these can not so differ because of opinion, but because they allege the facts to be otherwise. This would amount to a contradiction—a denial of my testimony.

But where is the scope of inquiry to terminate? My answer will exclusively disclose my private transactions, with which, in the abstract, Congress has nothing to do. But it is said we want to be informed as to them, because it may be that we shall discover some other citizen, who, by virtue of private business with me, has become possessed of sufficient means to corrupt members of Congress, and who may have been unscrupulous enough to so appropriate it; and we want his name that we may summon him and put to him the inquiry, "What did you do with the money you received from Mr. Wolcott in your private dealings with him, in March last, or at other times? Did you use it to influence, improperly, members in their action upon the tariff act of 1857?" He denies any such use of it, and then he is asked, "How, and to whom, then, did he dispose of it?" Thus, his private transactions are to be ransacked and disclosed, and the same course of proceeding is to be pursued as to all other citizens, into whose hands any part of the fund may be traced, though coming strictly from private business transactions, which, sacred in the eye of every civilized community in the world, are to be laid bare, under the authority of Congress to inquire into the official integrity of its members and officers.

I am advised, and the statement is made with all respect to the House and its legal authority, that such a doctrine as this would establish for it an unrestrained inquisitorial power, not less destructive of its legitimate influence, and its ability to discharge its high and most important legislative functions with usefulness to the country, than ruinous to what has ever, heretofore, been considered the well-established rights of the citizen—the unmolested enjoyment of all his private relations, in the transaction of his private business. Official corruption in members of Congress may have existed; it is not for me to deny it, since the very charge submitted to your committee assumes that it may have been the case in the last Congress. But it is better, far better, that this go unquestioned and unpunished, than that the sacred private rights of the citizen should be violated. The eye of a discerning and honest constituency, and the public opinion of the body, which the member may, by his presence, pollute, with his conscious guilt punishing him day and night with compunctious visitings, will, in a brief period, consign him to the degraded level to which he belongs.

The blot on the fair fame of the body will thus be wiped off, and its mighty powers, granted for the protection of the citizen, and the legitimate increase of the power and glory of the country, left unimpaired; private rights will then also be possessed without danger of illegal inquiry, and the citizen will look to Congress as competent to every of its delegated powers, whilst alike unwilling to attempt, and impotent to obtain, possession of others. With a perfect knowledge of the honesty of my own conduct, and of my freedom from intentional disregard of the constitutional authority of your honorable body, or of your committee, and with a full confidence in the justice of the House, I submit, without further remark, this my defense to its further consideration and more mature judgment.

J. W. WOLCOTT.

Sworn to and subscribed before me, the 15th February, 1858.

JAMES L. ORR,
Speaker.

Pending the reading of the foregoing answer,
Mr. LETCHER said: I should like to know, Mr. Speaker, to what question this is a response. I want to hear the question read, so that we may know what is proposed to be answered by it.

Mr. MOORE. I hope the gentleman from Virginia [Mr. Letcher] will withdraw all objection and let the witness be heard.

Mr. STANTON. I understand it to be an argument to show that the House has no power to require from him an answer to the interrogatory, and that he is not in contempt. I trust the House will hear his argument with patience and candor, and will consider it.

Mr. LETCHER. I want to know what question the House has asked to produce this answer.

The SPEAKER. The questions propounded to the witness were:

What excuse have you for refusing to answer the question propounded to you by the select committee of this House, before which you were summoned to appear, as to whether you had received any sum of money from Lawrence, Stone & Co., some time in March, 1857!

Mr. LETCHER. And this is an answer to that, is it?

The SPEAKER. The second question was:

Are you now ready to answer that, and all other proper questions that may be propounded to you by that committee?

These were the two questions propounded. The witness is proceeding to assign, as the Chair understands, the reasons why he should not answer.

The Clerk resumed the reading of the answer, and was again interrupted by

Mr. BURROUGHS. I desire to know how long that paper is—what length of time its reading will occupy? I think we have had quite enough of it, and I think it time for the committee to make some move on the subject.

The SPEAKER. The Clerk has not as yet finished the reading of the paper.

Mr. JOHN COCHRANE. Let us hear it.

Mr. BURROUGHS. I suggest that we have heard enough of that paper; and I think it time that the chairman of the special committee should make some motion.

Mr. ADRAIN. I hope the House will hear the remainder of the paper read. The House adjourned over from last Friday till to-day to give the witness an opportunity of purging himself of contempt. The object of this paper is to purge him of that, and I hope the House will permit the paper to be read.

Mr. JOHN COCHRANE. Under the hour rule.

The Clerk again resumed the reading of the paper, and was again interrupted by

Mr. CLEMENS. Is that paper signed by Reverdy Johnson, or by John W. Wolcott?

The SPEAKER. It is signed by the witness, and sworn to.

The reading of the paper was again resumed, and completed.

Mr. STANTON. It will, of course, be expected that the committee which has this subject in charge will present to the House such action as they may think the answer of the witness demands. There has been, of course, no opportunity for consultation with the committee since the contents of the answer have been known. Anticipating, however, that the answer might be unsatisfactory, from what has previously passed, I have availed myself of the opportunity of consulting on the floor such members of the committee as were in the Hall at the opening of the session; and I therefore submit the following resolution:

Whereas, John W. Wolcott has failed satisfactorily to answer the questions propounded to him by order of this House, and has not purged himself of the contempt with which he stands charged: Therefore,

Be it resolved, That the said John W. Wolcott be committed by the Sergeant-at-Arms to the common jail of the District of Columbia, to be kept in close custody until he shall signify his willingness to answer the questions propounded to him by the select committee of this House, and all other legal and proper questions that may be propounded to him by said committee; and for the commitment and detention of the said John W. Wolcott, this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having the said John W. Wolcott in custody, shall be informed by said Wolcott that he is ready and willing to answer the questions heretofore propounded, and all proper and legal questions that may hereafter be propounded to him by said committee, it shall be the duty of such officer to deliver the said John W. Wolcott over to the Sergeant-at-Arms of this House, whose duty it shall be to take the said Wolcott immediately before the committee before which he was summoned to appear for examination, and to hold him in custody subject to the further order of this House.

It is due, certainly, to the witness, and it is due to the occasion, that the House, exercising the powers of a court, and passing sentence of indefinite imprisonment on a citizen, should act coolly and calmly, and on a full and distinct understanding of the principles on which that power is to be exercised.

As the power which these resolutions propose to exercise is probably to be tested before the judicial tribunals of the country, it seems to me to be proper to submit a very brief and condensed statement of the principles upon which it rests, and which, in my judgment, justify and require its exercise on this occasion.

The Constitution makes "each House the judge of the elections, returns, and qualifications of its own members," and authorizes each to "punish its members for disorderly behavior, and, with the concurrence of two thirds, to expel a member."

The powers thus granted are judicial powers conferred upon the Senate and House of Representatives, as separate and distinct bodies, and have no connection with the general grant of legislative powers to Congress. And the fact that any specific and limited powers are granted to Congress, has nothing to do with the grant of judicial powers to the Senate and House of Representatives, as separate, several, distinct tribunals. The House, in the exercise of the judicial power thus conferred upon it, is sovereign and supreme—just as much so as if the grant of legislative powers to Congress had been general and universal over all rightful subjects of legislation.

I admit that Congress can not confer upon the House additional powers, not enumerated in the specific powers granted to Congress, or necessary to the exercise of the granted powers.

It is also admitted that there has been no act of Congress authorizing either House to punish a witness or anybody else for contempt. The only acts of Congress which are supposed to have any bearing upon the question, are the acts authorizing the chairman of committees to administer oaths, and requiring the Speaker to issue subpoenas for witnesses, upon the application of a committee authorized to send for persons and papers. And the law passed at the last session, making a party liable to indictment and punishment for refusing to appear and testify before a committee of either House of Congress, "in addition to the pains and penalties now existing," which assumes the existence of the power to punish for contempt.

The power to punish for contempt is a necessary incident to judicial power, without which it can not be exercised. The judicial power is just as much sovereign and supreme as the legislative or executive. The power to decide controversies between citizens and between the citizen and the State, is one of the most important attributes of sovereignty; and the power to decide carries with it the power to inquire,

to investigate, and to consider. And how can any tribunal inquire and investigate without the power to compel the attendance of witnesses, and to require them to testify? Who would consent to be bound by the decision of a court that was confined to the testimony of such witnesses as might come voluntarily before it, and such evidence as the witness might choose to give? The idea of a judicial tribunal without plenary power over the parties and witnesses is an absurdity. The creation of a court or a grant of judicial power, either in an organic law or an ordinary legislative enactment, carries with it power over the parties, the witnesses, and all the instruments of evidence that are necessary to the exercise of the power granted. At common law, in England and in all the States of the Confederacy, every judicial tribunal, from justices of the peace to courts of last resort, have the power of issuing attachments and fining and imprisoning parties and witnesses for contempt. It is true that in most of the States statutes have been passed to regulate the exercise of this power. But these are restraining acts, to prevent the abuse of the power and prescribe the manner of exercising it.

But I apprehend that no lawyer will claim that the power is derived from the constitution or the statute law of any State, and that it does not exist without such grant.

If the power to "punish members for disorderly behavior, and to expel a member" be in its nature a judicial power, it carries with it *ex necessitate rei*, such incidental powers as are indispensable to its exercise.

This committee is required to "investigate" certain matters named in the resolution under which it was appointed. And how can it "investigate" if the House has no power to compel a witness to testify to facts within his knowledge which are indispensable to a proper understanding of the matter to be "investigated?"

The investigation with which your committee is charged is based upon an allegation that \$87,000 was paid by Lawrence, Stone & Co. to influence the legislation of the last Congress. The evidence already taken by the committee tends to prove that \$58,000 of this sum was paid to this witness. It is true that this witness says that this money was not paid to him, or paid out by him, to influence legislation. But *non constat* but he may have honestly paid it to some one who did use it corruptly; and how is the committee to trace it unless they can compel him to tell to whom he paid it?

But the committee and the House may differ with the witness as to what is an honest and justifiable use of the money. Are the committee and the House to assume, upon the judgment of the witness, that the consideration for which it was paid to him, or paid out by him, was legitimate and proper? I submit that the House has a right to know what that consideration was that they may judge of its character. If it is said that this is not a case of the "misbehavior of a member," which the House is authorized by the Constitution to inquire into and punish, I answer, first, that that is a question which goes to the power of the House to institute this investigation. It assumes that the court has no jurisdiction over the subject-matter.

But this is a question which can not be made by a witness who is under examination. It may be that the question of jurisdiction itself depends upon the facts which the witness refuses to disclose. Suppose a party were on trial in any court of the United States, for an offense which the defendant claimed was not within the jurisdiction of the courts of the United States, but was within the exclusive jurisdiction

of the State courts; could a witness refuse to answer a question on the ground that the court had no jurisdiction? Would the court be bound to decide the question of jurisdiction against the defendant before the witness could be compelled to testify? Would not the court say that the question of jurisdiction was one with which the witness had no concern and had no right to inquire into? That to enable the court to try the question of jurisdiction, it had a right to inquire into the facts which were necessary to enable the court to decide the question of jurisdiction, and that the witness must therefore be compelled to testify?

If it be said that the want of jurisdiction is apparent upon the face of the record; I answer that the witness is not a party to the record, and can make no question about it. The record is made up and the issue joined by the parties without making any question of jurisdiction. The trial is in progress and the witness is upon the stand, and he will not be permitted to make a collateral issue not made by the pleadings or urged by either of the parties.

But the question of jurisdiction was decided by the House by the passage of the resolution under which this committee is acting, and in every order since made in relation to this witness as well as the witness Williamson, from New York. This House has, at its present session, raised not less than five other committees with similar powers, which can not be distinguished in principle from the committee before whom this witness is required to testify. If, therefore, this witness shall be discharged upon the ground that this committee have no power to investigate the matters referred to them, it follows that this and all other committees of investigation that have been raised during the session must be at once disbanded. It would therefore seem rather late in the day to raise a question of this kind.

If gentlemen hold that the House has no power to investigate the matters referred to these committees, why was not the question made upon the passage of the resolutions for their appointment? But, if the House shall now come to the conclusion that these committees were imprudently raised, and that the House has transcended its powers, the sooner we retrace our steps the better. For one, I have no doubt about the power.

It may be matter of controversy whether the constitutional provision authorizing the House to punish its members for "disorderly behavior" contemplated anything beyond the preservation of order and decorum in the debates and proceedings of the House whilst in session, but, whatever may be the true construction of this clause, there are certain powers that are necessarily incident to every judicial tribunal, and to every legislative body. Amongst these are the power to control its own officers, to defend itself and its members against aggression, and to protect its own dignity and honor. These powers are indispensable to its very existence. Without them, it is helpless, imbecile, and contemptible. A legislative body without the power to purge itself by the expulsion of a member for bribery, would be an object of scorn and contempt. It is a power that has been exercised a thousand times in the English Parliament, by this House, by the legislatures of the various States of the Union, and has never been denied by any judicial tribunal or legislative body. The power to investigate, and to try a member, is merely the exercise of the power to punish or expel.

But the power of the House over its members is not limited by the Constitution to cases of "disorderly behavior;" but in addition to the power to "punish" for this cause, the House may, with the "concur-

rence of two-thirds, expel a member." For what may he be expelled? Not merely for "disorderly behavior," but for whatever may, in the judgment of two-thirds of the members, be good cause for expulsion. This is an ample warrant for an inquiry into the conduct of a member, for the purpose of ascertaining whether he has done anything worthy of expulsion.

So far, I have discussed the question upon principle alone, without reference to precedent or authority. My time and opportunities for consulting authorities have not been such as to enable me to make any extended reference to precedents. There is an excellent summary of the principles governing the powers and privileges of Congress, with a reference to sundry authorities, in Jefferson's Manual, pages 52 to 56. From this it will be seen that some very questionable powers were exercised by the House from 1795 to 1800. The questions that seem mainly to have been discussed in those cases, was whether the power of punishing for contempts, whether witnesses or others, could be exercised without an act of Congress regulating the exercise of the power conferred by the Constitution. This question has been abundantly settled since, by the repeated exercise of the power and by the uniform and concurrent decisions of the House in every case where the power has been called in question.

The case of Anderson, which was referred to in the discussions at the last session, was much stronger than the one now before the House. In that case, an attachment was issued against Anderson for a contempt of the privileges of the House, in attempting to bribe a member to make a favorable report from a committee on a private bill. He was arrested by the Sergeant-at-Arms and brought to the bar of the House, and reprimanded by the Speaker by order of the House, and then discharged from custody. He brought an action of trespass for false imprisonment against the Sergeant-at-Arms in the circuit court of the United States. The Sergeant-at-Arms was justified under the Speaker's warrant. The justification was sustained and judgment rendered against the plaintiff. He took a writ of error to the Supreme Court of the United States, and the judgment of the circuit court was affirmed by that court. This decision was made about the year 1818, when the country was peculiarly free from political excitement, and when the judges of the Supreme Court commanded the entire confidence of the whole country, and the court were unanimous. The power exercised in that case was much more questionable than the ordinary power exercised by every court in the country of imprisoning a witness for refusing to testify.

The case of Simonton, at the last session, was precisely like this, and I have followed that case in every particular, except that I propose to commit the witness to the jail of the District of Columbia, instead of requiring him to be kept in close custody by the Sergeant-at-Arms. I have adopted substantially the resolution offered on that occasion by the gentleman from Illinois over the way [Mr. Harris], whose authority, I fear, will not go so far with gentlemen on that side of the House now as it did at the last session.

The reason for sending the witness to the custody of the Sergeant-at-Arms was the statement made by you, Mr. Speaker, as a member of that committee, that, in your judgment, the jailer would not be bound to receive him. With all due deference to your better judgment, I have, after some reflection, come to a different conclusion. The jail of this District was built by Congress. It is under the absolute control of Congress, and may be converted into a church or a distillery, or

anything else that Congress may direct. The expense of maintaining the prisoners is paid from the national Treasury. The marshal of the United States for the District is *ex officio* the keeper of the jail. He is bound to receive into his custody all persons committed to the jail of the District by any judicial tribunal in the District having power to imprison. This House, when acting judicially, is such a tribunal; and, I have no doubt, if he would refuse to receive a prisoner committed by the House, that he would be liable to an indictment for an escape.

I see no reason why this party shall not be dealt with precisely as other parties are who are found guilty of similar offenses. I have no notion of having him feasted at one of the hotels of the city at public expense. I am a Republican of the old school, and believe in practicing that democratic equality which I profess. I have no notion of making distinctions on account of color or condition. I would treat this Boston banker precisely as I would treat one of these hod-carriers about the Capitol, whether he be black or white. There is no hardship in the case. All he has to do is to submit to the laws of the country, as they are administered by its legally-constituted tribunals, and he is entitled to an immediate discharge. With this he ought to be satisfied.

I desire to say that, while I have myself no inclination to press the House to a hasty decision, I am not disposed to take the responsibility of protracting its deliberations upon this question, and occupying more time than the occasion calls for.

I take it for granted that this witness intends to test the power of this House before the judicial tribunals of the District. Let him try it. While I do not feel disposed to precipitate the action of the House, on the other hand I do not feel disposed to make myself responsible for an unnecessary consumption of time, and therefore I shall move the previous question upon the resolutions, knowing that if the House desire a discussion they will vote it down.

Mr. BILLINGHURST. I desire to call the attention of the gentleman from Ohio to the phraseology of his resolution, and to suggest a slight amendment.

Mr. RITCHIE. I rise to a point of order. I believe the previous question has been called, and no amendment is in order.

Mr. BILLINGHURST. I appeal to the gentleman from Ohio to hear the proposed amendment.

Mr. STANTON. I am willing to hear it read.

Mr. BILLINGHURST. I will say, in the meantime, that the House has no power to punish by imprisonment beyond the present session, and the resolution upon its face is perpetual imprisonment.

The amendment was read, as follows: Insert after the word "committee," near the close of the first resolution, these words, "or until the termination of the present Congress."

Mr. STANTON. There is no necessity for that, because, if he is in custody when Congress expires, he will be discharged on *habeas corpus* immediately.

* * * * *

A motion to lay the said resolutions on the table was lost by yeas 34, nays 158 (Globe, p. 714), and the same were then adopted by yeas 133, nays 55 (Globe, p. 715).

* * * * *

[NOTE. See page 275 for omission.]

APRIL 30, 1858.

[Globe, p. 1906.]

Mr. Stanton, from the select committee, reported the following resolution which was agreed to, viz:

Resolved, That the select committee, etc., have power to authorize any two members of said committee to take the testimony of any witness, who, by reason of sickness, or any other cause can not be brought before said committee, at such time and place as the members so authorized may deem expedient, and that they have leave to sit during the sessions of the House.

On May 27, 1858, Mr. Stanton, from the select committee, submitted the following report, accompanied by the views of Mr. Moore and Mr. Purviance, printed separately:

The select committee appointed to inquire into the expenditure of money for the purpose of influencing the passage of the tariff of 1857, by the Thirty-fourth Congress, now report:

That the powers and duties of the committee were defined by the resolution under which they were appointed, as follows:

Resolved, That a committee of five members be appointed to investigate the charges preferred against the members and officers of the last Congress, growing out of the disbursement of any sum of money by Lawrence, Stone & Co., or other persons, and report the facts and evidence to this House, with such recommendations as they may deem proper, with authority to send for persons and papers.

The committee organized on the 26th day of January, A. D. 1858, and afterwards to wit, on the 27th day of the same month, in pursuance of a resolution of the House, appointed James B. Sheridan, esq., their clerk and stenographer.

The committee, acting upon the belief that the action of the House in instituting the investigation, had been based mainly upon the published report of a committee of the stockholders of the Middlesex Manufacturing Company, referred to that paper for information as to the proper starting point in making the investigations with which they were charged.

We there ascertained that Richard S. Fay, jr., had acted as the secretary of that committee; that the investigation had been mainly conducted, and the report prepared by him.

Some of the members of the committee were personally cognizant of the fact, that Mr. W. W. Stone, a member of the firm of Lawrence, Stone & Co., had spent a considerable portion of his time during the last session of Congress in this city, urging the passage of the tariff of 1857.

Believing, from these circumstances, that the testimony of these gentlemen could not fail to give the committee information which would be very important—for the purpose of indicating the line of investigation which it would be proper to pursue, if for no other purpose—they were summoned, and appeared before the committee on the 27th day of January, A. D. 1858.

In this the committee were not mistaken. The testimony of these gentlemen satisfied the committee at once that Mr. John W. Wolcott, of Boston, was the active agent in the disbursement of the money that had been advanced for the purpose of influencing the action of Congress upon the passage of the tariff.

No doubt was entertained that, if his testimony could be obtained,

that he could furnish a full and satisfactory explanation of the whole matter.

Mr. Wolcott was accordingly summoned and appeared before the committee; but, as the House is already aware, he refused at the very threshold of his examination to answer the questions propounded to him by the committee. It was at once apparent to the committee that, unless he could be compelled to testify, the investigation could lead to no satisfactory result. And the committee believe that his (Mr. Wolcott's) premature discharge by the House has prevented the thorough and satisfactory exhibit of the disbursements which they were required to investigate, and which they had hoped to be able to make.

In the absence of the testimony of Mr. Wolcott, the committee have resorted to such other sources of information as were accessible to them, and have succeeded in collecting facts which throw much light upon the subject, though they do not present so full and satisfactory an account of the ultimate distribution of the entire sum advanced for the purpose of influencing the action of Congress as was desirable.

The testimony is more voluminous than was necessary to establish the facts proved. This has resulted partly from the unwillingness of some of the witnesses to testify to all they knew (and hence it became necessary to resort to cross-examination) and partly from the fact that the examinations were oral and conducted somewhat irregularly by the various members of the committee. Hence, there is much repetition and some irrelevant matter which might very well have been omitted if the committee had felt at liberty to omit any part of the evidence; but, as the resolution of the House directs the committee to "report the evidence," they have judged it proper not to withhold any part of it.

The committee propose to give a summary of the facts proved, so far as they come within the range of the inquiry committed to them by the House.

The firm of Lawrence, Stone & Co. was composed of Samuel Lawrence, W. W. Stone, Jarius Slade, O. H. Perry, and Henry Jenkins. Its principal place of business was in Boston, with a branch in New York, where a large share of its business was transacted.

Messrs. Lawrence, Slade, and Perry were the Boston partners, and Messrs. Stone and Jenkins had charge of the New York house.

The "Middlesex Manufacturing Company" is a corporation created by the laws of Massachusetts, with a capital of one million of dollars, engaged in manufacturing woolen goods.

The "Bay State Mills" is a corporation of the same kind, created in the same way, with the same amount of capital, and engaged in the same kind of business.

Samuel Lawrence was the treasurer of both of these corporations, and the firm of Lawrence, Stone & Co. their selling agents.

All the goods manufactured by the companies went into the hands of Lawrence, Stone & Co., were sold by them, and the proceeds accounted for and paid to Samuel Lawrence, treasurer.

The finances of the Boston house were managed by Messrs. Lawrence and Slade, Mr. Perry's business being at the mills, and not at the countinghouse. Hence, Mr. Perry seems not to have been in any way connected with the matters which the committee have been endeavoring to investigate.

The New York house seems to have been mainly under the control of Mr. Stone, and Mr. Jenkins does not seem to have had any direct connection with the matters that have been brought to the attention of the committee.

It appears from the evidence that the manufacturers of woolen goods, having for several years past despaired of obtaining any legislative protection by an increase of duties on woolens, have been seeking to accomplish the same result by reducing the duties on wool, dyestuffs, and other raw materials that were used by the manufacturers. To this end they have been diligently engaged in collecting and publishing such statistics and arguments as they considered proper to prepare the public mind for that step.

In this way a small amount of money was expended prior to the commencement of the last session of Congress.

At the last session a vigorous and concerted effort was made. Mr. Stone spent most of the winter here.

In justice to Mr. Stone, however, it is proper to say that there is no evidence that he was personally engaged in using any corrupt means with members of Congress. His labors seem to have consisted mainly in endeavoring to convince members from the wool-growing States that reducing the duties on imported wool would increase the price of wool grown in the United States. It is not strange that he should have had rather indifferent success in this enterprise.

The manufacturers were not disposed to rest the success of their enterprise solely upon such influences as these.

The evidence satisfies the committee that Mr. Wolcott was sent here, and authorized to pledge any amount of money, and to use any means, however corrupt, to insure the success of the measure. He does not seem to have had any considerable sum of money here with him.

And, from all the evidence in the case, the committee are inclined to the opinion that he was only authorized to promise the payment of money, in the event of the success of the measure. It is proved that \$74,000 was paid to Mr. Wolcott soon after the adjournment of the last session of Congress by Lawrence, Stone & Co., evidently for the purpose of fulfilling his alleged promises and undertakings, made during the session, to secure the passage of the tariff.

This was in addition to some \$500 advanced for the expenses during the session.

The proofs do not show that he ever paid a dollar of this sum for the purpose for which it was advanced, with the exception of \$4,000 to George Ashmun, of Massachusetts.

Whether he falsely represented to Lawrence, Stone & Co. that he had made promises which required this sum to enable him to meet, or whether he had in fact made promises which he afterwards failed to comply with, may be matter of controversy, but there is no doubt that he cheated somebody, and appropriated pretty nearly the whole of this vast sum to his own use.

It was all paid to him during the month of March, 1857.

The first payment was by a draft drawn by the Boston house upon the New York house, dated March 11, 1857, for \$25,000. The next was made on the 13th of March, and was paid by Mr. Stone in negotiable paper and a check upon the Metropolitan Bank, New York, and amounted to \$20,018.83.

On the 14th of March he was paid by Mr. Stone the further sum of \$12,981.17.

On the 10th or 12th day of March he was paid by Mr. Slade, in Boston, \$16,000, making in the aggregate \$74,000. The further sum of \$5,000 was paid, through Mr. Ezra Lincoln, to Thurlow Weed, of Albany; and \$8,117.06 was paid by the New York house to various persons in comparatively small sums. This makes an aggregate of

\$87,117.06, which is the whole amount found on the books of Lawrence, Stone & Co. charged to the expenses incurred in the passage of the tariff of 1857.

Of the \$8,117.06 disbursed by the New York house, there was paid to—

D. M. Stone, editor of the Journal of Commerce.....	\$3, 500
J. N. Reynolds.....	1, 570
A. R. Corbin, of Washington.....	1, 000
Making.....	6, 070

The balance of the \$8,000 was paid for traveling expenses, newspapers, pamphlets, etc.

In addition to this, it appears from the testimony of Mr. Slade that Lawrence, Stone & Co. received from other persons engaged or interested in woolen manufactures some \$12,000 or \$13,000, which was disbursed by them in addition to the \$87,000 which appeared upon their books.

Mr. Slade's testimony was taken on the 3d of May, at Philadelphia, where he could have no access to the books and papers of the firm, and he could, therefore, give no account of the disbursements of this sum.

It is due to Mr. Slade to say that he testified with entire frankness and candor, and that the committee consider his statements entitled to full credit.

As this was the first intimation the committee had from any quarter that there was any expenditure beyond the \$87,000, they have not since been able to find any clew to the disbursement of this additional sum. And the brief time allowed the committee, before they will be disorganized by the adjournment of Congress, leaves no opportunity for further inquiry.

Of the sum paid to Wolcott, \$13,645.79 was commercial paper, indorsed in blank and negotiable by delivery; \$44,354.21 was paid in checks on sundry banks in the city of New York, drawn by the New York house of Lawrence, Stone & Co., and \$16,000 was paid in bank bills by Mr. Slade in Boston.

One of the checks, for \$10,000, on the Metropolitan Bank, New York, received by Walcott from Lawrence, Stone & Co., was taken to the house of Francis Skinner & Co., in New York, by Walcott, and exchanged for their checks on the American Exchange Bank, New York, two for \$3,000 each, and one for \$4,000.

He inquired of Mr. Smythe, the member of that firm who made the exchange, for a note broker, intimating that he desired to invest the amount in negotiable paper.

The first drafts, drawn in favor of Mr. Walcott for \$25,000, were paid in currency at the counters of the banks.

Of this sum \$10,000 was drawn by Mr. Hewett, the cashier of Lawrence, Stone & Co., from the Metropolitan Bank, with the statement (which he supposed at the time to be true) that the money was to be taken to the West to buy wool.

In a few days afterwards the cashier of the bank informed Mr. Hewett that the money had all come back to him in a heap.

Under these circumstances the committee supposed there might be some clew to the distribution of the money obtained by an examination of the books of the banks and note brokers in the city of New York.

With this view the committee sent their clerk, James B. Sheridan, esq., to the cities of New York and Boston, with instructions to trace the funds used by Mr. Walcott to their destination, as far as possible.

Mr. Sheridan showed himself well qualified for the inquiry, and was more successful than the committee had any reason to anticipate.

He succeeded in tracing the whole of the notes which make up the sum of \$13,645.79 received by Walcott from Lawrence, Stone & Co., as well as other notes, amounting to \$4,679.13, which Mr. Walcott purchased from O. M. Bogart, a New York broker, with the checks of the Exchange Bank, to sundry Boston banks and Boston brokers, where they were deposited for collection by Mr. Walcott, and were credited to him or some relation of his, whose name was used to conceal his connection with the transaction.

During the summer of 1857 Mr. Walcott seemed to have been dealing extensively in negotiable paper.

In September, 1857, he deposited with the Hamilton Bank, Boston, notes amounting in the aggregate to \$21,062.08, and at the same time had deposits with various other banks and brokers, the amount of which the committee have not ascertained.

Between that time and the first of November he gradually withdrew his deposits from the banks, and about the first of November he engaged in banking himself, in partnership with ex-Governor Gardiner, of Boston.

And the committee have no doubt but much the largest portion of the \$70,000, which remained in his hands after the payment of \$4,000 to Mr. Ashmun, has been appropriated by Walcott to his own use, and now constitutes a portion of the capital of the firm of Gardiner, Walcott & Co., bankers in Boston.

There is not a particle of evidence that any part of the sum expended by Lawrence, Stone & Co., to influence the passage of the tariff of 1857 ever went into the hands of any member of Congress. And if any reliance could be placed in the evidence of Mr. Walcott, it shows affirmatively that no portion of it ever did.

But the committee must be permitted to say, that they have not one particle of confidence in the evidence which Mr. Walcott saw proper to give before the committee. He testifies that he received no money to be used in influencing the passage of the tariff of 1857.

All the evidence in the case flatly contradicts this statement.

He says he paid no money to any person to influence the passage of the tariff.

George Ashmun testifies that Mr. Walcott paid him \$4,000 for that purpose and no other. His evidence is, beyond all controversy, willfully and corruptly false.

It is proper for the committee to say that they are perfectly aware that the testimony of Mr. Sheridan, to facts of which he was informed by bankers and brokers in New York and Boston, would not be competent to establish a charge of corruption against any member or officer of Congress, or of falsehood against Mr. Walcott or anybody else.

If Mr. Sheridan's investigations had disclosed any fact implicating any member or officer of Congress, the witnesses who could testify from personal knowledge would have been brought before the committee.

But as the facts ascertained by him were gathered from the books of numerous bankers and brokers, in New York and Boston, and conversations with them, which are detailed in a brief narration, it was deemed unnecessary to incur the expense of having all these parties, with their books, brought before the committee, or to incumber the case with a separate deposition from any, and through whose hands any of this paper had passed.

The effect of the evidence is to furnish a presumption that no part of the money that was paid to Mr. Walcott could have come into the hands of any member or officer of the House, and as no doubt can be entertained of the accuracy of the information procured by Mr. Sheridan, his evidence was deemed sufficient for the purpose which the committee had in view. While it is a source of gratification to the committee that the proofs show no member of the House to have been connected with this expenditure of money, they regret that they are under the necessity of saying that it shows that \$1,000 was paid to Mr. A. R. Corbin, who was then clerk of the Committee on Claims of this House.

Mr. Stone seeks to justify or excuse this payment by saying it was entirely voluntary on his part, without any previous promise—a mere trifling gratuity or present, by way of acknowledgment of sundry acts of kindness and advice received from Mr. Corbin during Mr. Stone's stay in Washington. But Mr. Corbin exhibits the letter from Mr. Stone, in which the draft for \$1,000 was inclosed, which says it is transmitted in "accordance with my understanding with you."

Mr. Corbin sneers a little at the blindness and stupidity of Mr. Stone in paying him \$1,000 for his services in aiding the passage of the tariff, when in fact he had, as he says, done all he could to defeat it.

The member of the committee to whom Mr. Corbin refers as one of those he urged to go against the measure, desires to say that at that time he had no acquaintance with Mr. Corbin; thinks he would not have known him by sight, and feels very sure that he never could have exchanged half a dozen words with him on that or any other subject until he met him in the committee room, when his testimony was taken.

Mr. Corbin's testimony, however, leaves no room to doubt that the sum was paid to him for his advice and assistance, and for the advantage which his official position gave him of ready access to members of the House.

The evidence of Mr. Corbin, and especially his letter to Mr. Samuel Lawrence, which is incorporated in it, will be found worthy of special attention.

Although the leading, prominent facts disclosed by his evidence do not bear very directly upon the inquiry with which the committee is charged, yet they exhibit the influences which have been brought to bear upon legislation for some years past.

Although the committee are not disposed to give Mr. Corbin all the credit which he claims for controlling the legislation of Congress on the most important measures of legislation affecting the revenue and finances of the country for the last ten years, they have no doubt but that he has exerted himself to the extent of his ability for the success of the schemes which he has advocated, and that he has been liberally paid for his services.

His testimony shows how the legislation of the country may be influenced by large masses of capital, concentrated in the hands of a few persons having a common interest, so as to benefit that interest at the expense of the great mass of the people.

It also shows how capitalists may be fleeced by parties who pretend to be able to exert an influence over legislation, of which they are wholly destitute.

When Mr. Corbin is compelled to choose whether he will admit that he has received and paid out large sums of money for the purpose of corruptly influencing the legislation of Congress, or has falsely represented himself as having done so, for the purpose of obtaining money

from persons interested in measures pending before Congress, he chooses the latter horn of the dilemma.

Whether his testimony is true or not is a matter of no consequence, so far as our present inquiry is concerned.

The evidence also shows that the manufacturers sought to propitiate and conciliate leading and influential men, in all the political parties of the country, to favor their scheme.

Thus, \$3,500 is paid to Mr. Stone, the editor of a leading and influential free-trade paper, which supported both the outgoing and incoming administration "*for collecting and publishing statistics.*"

And \$5,000 is paid to Mr. Weed for collecting statistics and using arguments with members in favor of the measure.

And \$1,500 is paid to Mr. J. N. Reynolds, president of the American councils of the city of New York, for the purpose of getting up resolutions in favor of the measure, and procuring their passage through the councils of the American party, etc.

It is proper for us to say, that at that time Mr. Weed was not the publisher of a newspaper, that he held no office, and that his personal exertions, and personal and political influences, alone seem sought for or obtained.

But it is also true that perhaps no man in the country exerted a larger or more controlling influence over the Republican party than Mr. Weed.

When such men as Mr. Stone, of the Journal of Commerce, and Mr. Weed are employed to "collect statistics" and write newspaper articles, everybody knows that it is not the labor which they perform, but the weight and influence of their name and character which is the main consideration for the money which is paid them.

These gentlemen have violated no law in receiving the money paid them, nor do the committee claim any right, either for themselves or the House, to pass any judgment of condemnation or approval upon their conduct.

The facts are submitted to the judgment of an intelligent public, to whom alone they are responsible.

The evidence taken by the committee shows that two members of the last Congress had some dealings with Lawrence, Stone & Co., before the commencement of the last session of Congress, which had no connection with the passage of the tariff. It really has no connection with the matter referred to the committee, and would have been omitted in the report of the evidence if they had felt at liberty to omit any part of the evidence which they have taken. And as newspaper rumors have been in circulation, which greatly perverted the evidence, the committee deem it due to those gentlemen that the evidence should be reported, and, with it, the unanimous opinion of the committee, that there is nothing in the proof calculated to throw a shadow of suspicion upon them.

The report of the committee has been delayed several weeks by the indisposition of Mr. Slade.

Mr. Lawrence is in Europe, and Mr. Slade was the only other person who was familiar with the affairs of the Boston house of Lawrence, Stone & Co.

It will be seen from the evidence of Mr. Cole that an attempt was made to obtain his evidence early in the investigation, but that he was then in a condition which forbade all idea of attempting to examine him. It was taken as early as, in the opinion of his physician, it was proper to do so. His testimony rendered it necessary to examine Mr.

Weed; and the extreme illness of a member of his family caused a further delay of some ten days.

The facts disclosed by the investigation do not seem to call for any action on the part of the House.

The only person subject to the control of the House, who is shown to have been *criminally* connected with the transactions which the committee were called upon to investigate, is Mr. Corbin, who resigned his position as clerk of the Committee on Claims as soon as he ascertained that there was evidence of his having received the \$1,000 paid to him.

The committee, therefore, recommend the adoption of the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject, and that the report, and the evidence accompanying it, be printed, together with the views of the minority."

B. STANTON.

AUGUSTUS R. WRIGHT.

WM. F. RUSSELL.

Mr. Sydenham Moore, from the select committee, submitted the following views of a minority of the committee:

The undersigned, not fully concurring with the majority of the committee in the report which has been submitted by them, will endeavor very briefly to point out some of his objections thereto.

The duty devolved upon this committee seems to the undersigned to have been a very plain one. It was "*to investigate the charges preferred against the members and officers of the last Congress, growing out of the disbursement of any sum of money by Lawrence, Stone & Co., or other persons, and report the facts and evidence to this House, with such recommendations as they may deem proper, with authority to send for persons and papers.*"

Instead of discharging this simple duty by presenting the facts and evidence to the House, with such recommendation as was deemed proper, the majority of the committee have, as it seems to the undersigned, transcended their authority by pronouncing judgment in advance upon certain individuals whose names have been mentioned by the witnesses in the course of this investigation. While some of those whose conduct, to say the least, was not altogether blameless, have been passed by in silence and not alluded to in the report, there are others who have been wholly acquitted of censure.

Now it seems to the undersigned that this committee was not authorized to anticipate or forestall the action of this House, by passing judgment, either of acquittal or of condemnation, upon any of those thus named in connection with this transaction.

Appreciating, however, the motives which prompted the majority of the committee to this course, and sympathizing with them in their desire that no undeserved censure should be cast upon anyone, the undersigned would have forborne to enter his dissent therefrom, for this cause alone, if said report had not also contained an implied censure of the House itself, on account of the resolution which it saw fit to adopt in relation to the recusant witness, John W. Walcott.

This witness was, on the 15th day of February last, committed to the common jail for a contempt of the House, in refusing to answer questions propounded to him; on the 22d day of March, thereafter, a resolution was adopted, by a large majority of the House, to deliver said Walcott into the hands of the judicial authorities of the District,

to answer to an indictment which had in the meantime been found against him for contumacy. It seems to the undersigned to be altogether improper and uncalled for in this committee to censure, even by implication, this House for its adoption of this resolution, and that they are not warranted in the conclusion that his testimony could have been procured even by a longer imprisonment. For the reasons herein imperfectly set forth the undersigned does not concur in the report of the majority of the committee, though he concurs in the resolution proposed, and prays that it may be adopted.

SYDENHAM MOORE.

Mr. Purviance, from the select committee, submitted the following views of a minority of the committee:

The undersigned, one of the committee appointed to investigate the charges of corruption in the passage of the tariff of 1857, begs leave to make the following report:

That he fully concurs in all of the report made by the majority of said committee, with the exception of that part which relates to the action of the House in surrendering John W. Wolcott for trial, for contumacy, in refusing to testify as fully as the committee believed he was bound to do.

Having, as a member of the Thirty-fourth Congress, voted for the law which prescribes a punishment of one year's imprisonment and a fine of \$1,000, upon a conviction of the offense therein designated, the undersigned believed and so voted, that Wolcott should be liberated from the imprisonment ordered by the House, for the purpose of being tried before the tribunal created by the act of the Thirty-fourth Congress. Any other course, in the judgment of the undersigned, would have been an arbitrary refusal to test the law, in the enactment of which the undersigned had most cordially participated.

Believing fully that Mr. Wolcott had made himself amenable to the provisions of the law referred to, and differing with the majority of the committee in the belief which they express, that the discharge of Wolcott prevented the committee from obtaining additional evidence from that source, and taking into consideration the fact that Wolcott had suffered imprisonment, under the order of the House, from the 15th February till the 22d March; and further, regarding the opinion expressed by a majority of the committee in the light of a censure upon the action of the House, the undersigned has felt constrained to withhold his signature from the report of the majority of the committee."

SAM'L A. PURVIANCE.

MAY 27, 1858.

The following letter from District Attorney Birney, inclosing a certified copy of the case *in re* John W. Wolcott, is given to complete the record of the case:

OFFICE ATTORNEY OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA,
Washington, D. C., August 2, 1894.

DEAR SIR: Inclosed I hand you copy of the presentment, indictment, affidavit, and docket entries in the case of the United States *v.* John W. Wolcott.

Yours, respectfully,

HENRY H. SMITH,

Clerk Special Investigating Committee, U. S. Senate.

A. A. BIRNEY,

U. S. Attorney, District of Columbia.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

The jurors of the United States, for the county aforesaid, do, upon their oath, present John W. Wolcott for failing and refusing to answer questions propounded to him, by order of the House of Representatives, through one of their investigating committees, as required by the act of Congress entitled, "An act more effectually to enforce the attendance of witnesses, etc.," "approved January 24, 1857," on about the 27th of February, 1858, on the evidence of Benj. Stanton, a member of the House of Representatives, United States.

THOS. CARBERRY,
Foreman.

(Indorsement:) 122. John W. Wolcott. March 4, 1858.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

The jurors of the United States for the county aforesaid upon their oath present that on the fifteenth day of January, in the year of our Lord eighteen hundred and fifty-eight, the House of Representatives of the United States of America adopted the following resolution, to wit:

"*Resolved*, That a committee of five members be appointed to investigate the charges preferred against the members and officers of the last Congress, growing out of the disbursement of any sum of money by Lawrence, Stone & Company, or other persons, and report the facts and evidence to the House (meaning the said House of Representatives), with such recommendations as they may deem proper, with authority to send for persons and papers."

And the jurors aforesaid, upon their oath aforesaid, further present that afterwards, to wit, on the twenty-second day of January in the year aforesaid, at the county aforesaid, by authority of the aforesaid resolution, a committee of the House of Representatives of the United States of America was duly appointed.

And the jurors aforesaid, upon their oath aforesaid, further present that John W. Wolcott, late of the county aforesaid, gentleman, on the eleventh day of February, in the year aforesaid, at the county aforesaid, the said John W. Wolcott being duly summoned as a witness to give testimony before the said committee of the said House of Representatives, and the said John W. Wolcott being called and duly sworn to testify as a witness before the said committee of the said House of Representatives of and concerning the matter of inquiry then in consideration before the said committee of the House of Representatives, the following question, pertinent to the matter of inquiry in consideration before the said committee of the said House of Representatives, by the said committee, to the said John W. Wolcott, was asked, propounded, and put: "Did you (meaning the said John W. Wolcott) receive from the firm of Lawrence, Stone & Company, sometime in March last, a sum of securities or money of the amount of thirty thousand dollars, more or less?" which said pertinent question the said John W. Wolcott, on the said eleventh day of February, in the year aforesaid, at the county aforesaid, did unlawfully and willfully refuse to answer, against the form of the statute in such case made and provided, and against the peace and government of the United States.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said John W. Wolcott, on the day and year aforesaid, at the county aforesaid, the said John W. Wolcott being then and there a person duly summoned as a witness by the authority of the House of Representatives of the United States of America to give testimony upon a certain matter before a committee of the said House of Representatives of the United States of America, and he, the said John W. Wolcott, being then and there duly sworn to testify before the said committee of the said House of Representatives, a certain question put to and asked of the said John W. Wolcott by the said committee of the said House of Representatives, the said question being then and there pertinent to the matter of inquiry in consideration before the said committee of the said House of Representatives, he, the said John W. Wolcott, the said question so put and asked by the said committee as aforesaid, did unlawfully and willfully refuse to answer, against the form of the statute in such case made and provided and against the peace and government of the United States.

P. BARTON KEY,
U. S. Attorney.

(Indorsement:) United States v. John W. Wolcott. Ind't: Refusing to answer question of committee of House of Representatives. Wit.: Hon. Benj'n Stanton, True bill. Tho. Carberry, foreman. Ap'l 5, 1858.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk County, to wit:*

Be it known that on this seventeenth day of April, in the year eighteen hundred and fifty-eight, before me, the subscriber, a justice of the peace in and for the county aforesaid, personally appeared John W. Wolcott, to me personally known, and made oath, according to law, that he is the same John W. Wolcott who hath been indicted by the grand jury for the county of Washington at the present term of the criminal court of said county in the District of Columbia, upon a charge of having unlawfully and willfully refused to answer a certain question put to him by a committee of the House of Representatives; that he can not, safely to himself, go into the trial of said cause at the present term of the said court, at which said term the said indictment was found for the following reasons, to wit:

First. Because, in consequence of his long imprisonment by order of the House of Representatives in the jail of said county and by reason thereof, his business and affairs have become so far burthensome, deranged, and entangled that he hath no time or opportunity to prepare for his defense in the said cause, and the whole of his time is required to arrange and put the same in order.

Second. Because of the state of the health of his wife at the present time; that while he was so imprisoned as aforesaid she had a dangerous and critical illness by which her life was put in imminent risk from which she hath not recovered, and the fact of his leaving home at this time to go to Washington to take his trial on this charge, would, as he is advised by her physician, in her present weak and nervous condition, in all reasonable probability, endanger it; and he appends hereto the certificate of the said physician as evidence of that fact.

Third. Because one of his counsel, James M. Keith, under whose advice and direction in part he acted in relation to the matters charged in said indictment, and who is cognizant of all the facts essential to his, said Wolcott's, defense, is now actually engaged as district attorney for the southeastern district of Massachusetts in the trial of criminal causes, and will be so engaged for the next five weeks, so that he can not be present to assist him in his trial at the present term of said court.

Fourth. Because he is advised that the testimony of said Keith is material to his defense to said indictment, and he believes that said Keith would, if present, under oath declare that he instructed him, the said Wolcott, at the time that the answers were given by him, the said Wolcott, to the committee of the House of Representatives in relation to the matters investigated by them and the matters charged in said indictment; that such answers were full and complete answers to all pertinent questions propounded by the said committee, and that he, said Wolcott, made such answers under the advice and direction of the Hon. Reverdy Johnson and said Keith; that said answers were full and complete answers to the questions propounded by said committee, and especially so in regard to the one charged in said indictment; and that he, the said Wolcott, did not refuse to answer any pertinent question propounded by said committee; and the reason that he, the said Wolcott, believes that said Keith would so testify is the fact that he, the said Keith, did so instruct, advise, and direct him, the said Wolcott, at the time before referred to, and hath since often reasserted the correctness of the instructions then given.

The said Wolcott therefore respectfully asks and moves the honorable court for a continuance of the said cause until the next term.

J. W. WOLCOTT.

SUFFOLK ss:

Subscribed and sworn to before me.

E. F. HODGES,
Justice of the Peace.

ROXBURY (MASS.), *April 16th, 1858.*

I hereby certify that I am the family physician of Col. J. W. Wolcott, and that his wife has been under my treatment since the first of February last, and that she still requires careful attention to insure her recovery.

Under existing circumstances, I deem it absolutely essential to her present recovery and future health that Col. Wolcott remain at home for the present, and that his trial should be deferred to some future day in order to avoid the mental excitement which would inevitably follow that process.

W. F. JACKSON, M. D.

COMMONWEALTH OF MASSACHUSETTS,
Secretary's Office, Boston, April 17th, 1858.

I hereby certify that at the date of the attestation hereto annexed E. F. Hodges was a justice of the peace for the county of Suffolk in the said Commonwealth,

duly commissioned and constituted; and that to his acts and attestations, as such, full faith and credit are and ought to be given, in and out of court.

In testimony of which I have hereunto affixed the seal of the commonwealth, the date above written.

[SEAL.]

OLIVER WARNER,
Secretary of the Commonwealth.

[The remainder, being mere docket entries, are omitted. They show the various stages of the case in court, and that on March 17, 1859, nolle prosequi was entered by the U. S. district attorney, upon the payment of \$1,000 and costs by Henry A. Willard, the surety of Wolcott, for said sum.]

The following statement of action taken by the House, which should have appeared on p. 263 (see note thereon), is herewith given, the same being of an important character, viz:

On March 22, 1858, Mr. Stephens, of Georgia, as a question of privilege, submitted a preamble and resolution, the first preamble reciting the commitment of said Wolcott to the common jail of the District of Columbia, for an infringement of the privileges of the House in refusing satisfactorily to answer certain questions put to him by order of the House, and that he was still held in custody under said order; and further reciting that—

Whereas, afterward, in pursuance with the provisions of law (act of January 24, 1857), the Speaker of the House did certify to the district attorney of the District of Columbia the facts pertaining to said case, and the same were laid before the grand jury of said District, and a presentment was thereupon found against said Wolcott for the said offense; and

Whereas the court in which said presentment is pending has determined that said Wolcott can not be tried on said presentment so long as the House of Representatives holds him in custody under its rights of privilege; Therefore,

Resolved, That the Sergeant-at-Arms is authorized and directed to cause said Wolcott to be released from jail and to deliver him over to the marshal of said District of Columbia, or other person authorized to receive him, to answer to the presentment pending in said court.

Pending said preamble and resolution, Mr. Phillips submitted a substitute therefor, reciting in the preamble substantially the same facts contained in the preamble submitted by Mr. Stephens and directing that the further execution of the order of the House in relation to Wolcott be suspended until the said indictment should be disposed of, and that the Sergeant-at-Arms be directed to hand him over to the authorities of the District of Columbia for action under said indictment, and upon the termination of proceedings under said indictment, that the Sergeant-at-Arms keep him as directed by the order of the House of February 15.

An amendment to said substitute was submitted proposing to discharge Wolcott upon the ground that it did not appear that he was imprisoned for refusing to testify in a matter in which the House had jurisdiction and power to enforce the testimony of witnesses by attachment for contempt.

The amendment and substitute were rejected, and the original preamble and resolution submitted by Mr. Stephens were agreed to.

No further action was taken by the House during the said session with respect to said Wolcott.

COMMITTEE REPORT CERTIFIED TO THE DISTRICT ATTORNEY
FOR THE DISTRICT OF COLUMBIA.

HOUSE OF REPRESENTATIVES, THIRTY-FIFTH CONGRESS, SECOND SESSION. JAMES
L. ORR, OF SOUTH CAROLINA, SPEAKER.

CASE OF PETER S. DUVAL.

This case is included for the reason that the action of the House in certifying a copy of a report of a select committee to the district attorney of the District of Columbia, which report was not printed or made a matter of record, was not certified under the act of January 24, 1857, was without precedent in the form and method observed, and has not since been followed. The facts are as follows:

On February 26, 1859 (*Globe*, p .1408), Mr. Niblack from the select committee to inquire into the account and conduct of the late Superintendent of Public Printing, stated that he was instructed by said committee to make a report in the case of P. S. Duval, accompanied by the following resolution, viz:

Resolved, That a copy of this report be certified to the United States district attorney for the District of Columbia, for such action in the premises as the circumstances in his opinion require.

No written report appears to have been actually submitted, however. If it was, the same was neither read nor ordered printed. The resolution does not state who was to "certify" the said report, and there was no rule of the House governing the matter. It is probable, therefore, that the Clerk of the House (the Clerk or Secretary under general parliamentary law being the recording and certifying officer of a legislative body) certified the case, which seems to have been one of suspected perjury on the part of Duval.

The records of the District supreme court show that Duval was indicted for perjury on March 28, following, and that subsequently said indictment was quashed, certain evidence in the case against him having been destroyed.

CONTUMACIOUS WITNESS AND CONTEMPT OF THE SENATE—INVASION OF HARPER'S FERRY.

UNITED STATES SENATE, THIRTY-SIXTH CONGRESS, FIRST SESSION. JOHN C. BRECKINRIDGE, OF KENTUCKY, VICE-PRESIDENT.

CASE OF THADDEUS HYATT.

On December 14, 1859, the Senate adopted a resolution submitted by Senator James M. Mason, of Virginia, for the appointment of a committee to inquire into the facts "attending the late invasion and seizure of the armory and arsenal at Harpers Ferry, etc.," (known as the "John Brown raid"), and a committee consisting of Senators James M. Mason, of Virginia; Jefferson Davis, of Mississippi; Jacob Collamer, of Vermont; Graham N. Fitch, of Indiana, and James R. Doolittle, of Wisconsin, was appointed. On February 21, 1860, Mr. Mason, from said committee, reported the following preamble and resolution, viz:

Whereas Thaddeus Hyatt, of the city of New York, was, on the 24th day of January, A. D. 1860, duly summoned to appear before the select committee of the Senate, appointed "to inquire into the facts attending the late invasion and seizure of the armory and arsenal of the United States at Harpers Ferry in Virginia, by a band of armed men," and has failed and refused to appear before said committee, pursuant to said summons, Therefore,

Resolved, That the President of the Senate issue his warrant, directed to the Sergeant-at-Arms, commanding him to take into his custody the body of the said Thaddeus Hyatt, wherever to be found, and to have the same forthwith before the bar of the Senate to answer as for a contempt of the authority of the Senate.

After some debate (Globe, pp. 849, 850) the resolution was agreed to by yeas 43, nays 12 (not a party vote), and on March 6 the Sergeant-at-Arms appeared at the bar of the Senate having in custody the said Hyatt. Mr. Mason submitted the following resolution, viz:

Resolved, That Thaddeus Hyatt, of the city of New York, now in custody of the Sergeant-at-Arms, on an attachment for contempt in refusing obedience to the summons requiring him to appear and testify before a committee of the Senate, be now arraigned at the bar of the Senate, and that the President of the Senate propound to him the following interrogatories:

First. What excuse have you for not appearing before the select committee of the Senate, in pursuance of the summons served on you on the 24th day of January, 1860?

Second. Are you now ready to appear before the said committee and answer such proper questions as shall be put to you by said committee?

And that the said Thaddeus Hyatt be required to answer said questions in writing and under oath.

Mr. Hale, of New Hampshire, moved to amend the resolution by striking out the word "excuse" and inserting the word "reason," which amendment was rejected by yeas 12, nays 42.

The resolution was then adopted by yeas 49, nays 6, and an order adopted remanding Hyatt to the custody of the Sergeant-at-Arms, and giving him until Friday, the 9th instant, to make answer to the questions directed to be propounded to him by the President of the Senate.

MARCH 9, 1860.

[Globe, p. 1076.]

* * * * *

The contumacious witness Hyatt was brought before the bar of the Senate in the custody of the Sergeant-at-Arms, and in response to an interrogatory of the Vice-President, stated that he was prepared to answer the questions asked him by order of the Senate. The said answer in writing and under oath was handed to the Secretary and by him read to the Senate, as follows:

To the honorable the Senate of the United States:

The undersigned, Thaddeus Hyatt, of the city of New York, is, by your resolution adopted March 6, 1860, required, under oath, to answer the following questions:

"1. What excuse have you for not appearing before the select committee of the Senate, in pursuance of the summons served on you on the 24th day of January, 1860?"

"2. Are you now ready to appear before said committee and answer such proper questions as shall be put to you by said committee?"

In response to the first question, the undersigned would respectfully observe that, while admitting the justice and propriety of investigating committees, raised for legitimate purposes, he is constrained to regard such a committee as the one raised upon the resolution of the 5th of December, 1859, to investigate the Harpers Ferry matters, as a tribunal with powers such as were never before known or contemplated in this republican Government; powers that are inimical to freedom, subversive of liberty, and in violation of the fundamental law of the land, and to be resisted because,

First. Contrary to reason.

Second. Contrary to the Constitution; contrary to both; because it reveals the legislative branch of the American Government in the attitude of invading social and domestic privacy, and by coercive processes compelling citizens to provide matter for legislation; a function that no citizen is charged with by the Constitution, and that can not be in the nature of things thrust upon him against his will. Contrary to both, because the mode of inquiry in obliging witnesses to leave their several States to travel long distances, is an "unreasonable seizure," in the sense of the fourth article of the amendments to the Constitution, inasmuch as testimony may be "coerced" as well within one part of the jurisdiction of the United States as another. In the argument of his learned counsel which he herewith introduces as a portion of his answer—

[NOTE.—At this point the reading of said answer was interrupted by Mr. Mason, of Virginia, and a debate occurred as to its further reading, which the Senate decided by yeas 40, nays 10, should be read in full. The Secretary accordingly resumed the reading of said answer.]

In the argument of his learned counsel, which he herewith introduces as a portion of his answer to the first interrogatory of the honorable Senate, he would observe that the right therein mentioned of the Senate, as a court with judicial or quasi-judicial functions to compel the attendance of witnesses, in virtue of powers expressly delegated by the Constitution, is not to be construed as an admission by him of the lawfulness of an unnecessary mode of getting testimony, even when the right to coerce is conceded. The undersigned means to be understood as saying:

1. That the power to coerce testimony, though constitutionally within the range of the judiciary branch of Government in the discharge of its duties of administering justice, is—

2. Not within the range of the legislative branch of Government as a power incident to legislation; and

3. That the judiciary itself, though clothed with power to coerce inquiry, is limited and controlled in the exercise of the function by both reason and the Constitution.

It may not be used despotically; the pound of flesh conceded, care for the blood is to be used. To compel witnesses from New York to testify at Washington, it must first be certain that they can not be coerced at New York or elsewhere than at Washington. In other words, laws are made for the people, and not the people for laws.

With these observations, and to first present to the mind of this honorable Senate

the constitutional and legal aspect of this case, as prepared for him by counsel, the undersigned presents in their own language, the argument of the Hon. S. E. Sewall and John A. Andrew, esq., of Boston, Mass., in the words following, to-wit:

[NOTE.—The reading of said answer was again interrupted by Mr. Iverson, of Georgia, who objected to the further reading of a certain part of the same. A debate followed, but the motion of Mr. Mason to omit the reading of the argument of counsel was withdrawn and the remainder of the answer read.]

“Our client is brought before your honorable Senate for an alleged contempt in refusing to appear as a witness before the committee of the Senate appointed by a resolution adopted December, 1859. We claim that he is no contumacious witness, in the usual sense of those words. Our client declares that he has no information in regard to the subject of inquiry directed by that resolution which he desires to conceal. He has declined to testify solely because he denies the authority of the Senate to compel his appearance; because he regards the resolution as a usurpation of power, which, if the precedent be established, may become the engine of frightful tyranny. Seeing clearly what appears to him to be the dangerous consequences of submitting to an unconstitutional exercise of authority, he refused to become a witness, not so much to protect himself, as to defend the rights and liberties of the whole people of the United States, which our client feels were assailed in his person. Therefore, we respectfully ask to be allowed to submit, in his behalf, the following legal argument:

“The resolution directs the appointment of a committee to inquire into the facts attending the late invasion and seizure of the armory and arsenal at Harpers Ferry by a band of armed men, and report whether the same was attended by armed resistance to the authorities and public force of the United States, and the murder of any citizen of Virginia, or any troops sent there to protect public property; whether such invasion was made under color of any organization intended to subvert the government of any of the States of the Union, the character and extent of such organization; whether any citizens of the United States not present were implicated therein or accessory thereto by contributions of money, arms, ammunition, or otherwise; the character and extent of the military equipments in the hands or under the control of said armed band; where, how, and when the same were obtained and transported to the place invaded; also, to report what legislation, if any, is necessary by the Government for the future preservation of the peace of the country and the safety of public property—the committee to have power to send for persons and papers.

“The resolution has two distinct branches. The first is to ascertain the facts attending the commission of certain crimes—that is, the invasion and seizure of the United States arsenal at Harpers Ferry by an armed force, etc., including the inquiry as to who committed the crimes, not only those who were present, but those who, though absent, aided and abetted the undertaking. The other is to report what legislation is necessary for the preservation of the peace of the country and the safety of public property. The power of sending for persons and papers given to the committee of course relates to both branches of the resolution.

“In behalf of our client, we shall consider, first, whether the Senate have power to direct the inquisition provided for by the first branch of this resolution.

“As we have already intimated, the great object of the proposed inquiry is to ascertain who committed certain crimes, and who were accessory to them. The resolution, to be sure, is not so worded; but an inquiry into the facts attending the invasion includes ascertaining who made the invasion, etc.; and the inquiry ‘whether any citizens of the United States not present were implicated’ means, unquestionably, what citizens were implicated?

“It requires no argument to show that to ascertain who committed certain crimes is a judicial inquiry. One object of all courts having criminal jurisdiction is precisely this: To ascertain who have committed crimes. Subsidiary to the higher courts, but all aiding in the same judicial function of finding out the authors of crimes, are coroners’ inquests, examining magistrates, and grand juries. These instruments of investigating crimes were well understood and used throughout our country when the United States Constitution was adopted. Now, we maintain, without hesitation, that the inquisition directed by the Senate, being purely a judicial one, belongs solely to the judicial department of the Government. If the courts have not now sufficient powers to inquire into crimes against the United States, let such powers be given by law. A defect in the laws in this respect can not justify the Senate in usurping the functions of the judiciary.

“One of the great fundamental principles on which the American constitutions rest is the separation of the legislative, executive, and judicial departments of Government. The Constitution of the United States is, in this respect, like all the rest. It vests all legislative powers granted by it in Congress. It vests the executive power in the President, and then it provides that ‘the judicial power shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish.’ (Art. 3, sec. 1.) ‘The judicial power’ means necessarily

all the judicial power, except such portions of it as are expressly or impliedly given to other bodies. Such is the trial of impeachments, which is expressly given to the Senate. (Art. 1, sec. 3.) And when the Constitution provides (Art. 1, sec. 5) that 'each House shall be the judge of the elections, returns, and qualifications of its own members,' it gives each House the judicial powers requisite for accomplishing these objects. So, when each House is invested with authority to expel a member (Art. 1, sec. 5), it must have all the judicial power necessary in trying him.

"With a few exceptions, then, all the judicial power of the United States is vested in the courts established by Congress, with their necessary incidents of examining magistrates, juries, and prosecuting officers. Congress has also provided for grand juries, and might establish coroners' inquests in regard to crimes against the United States. But neither the Senate nor the House can be a court to try persons charged with treason, murder or any other offense, or act as a coroner's inquest, examining magistrate, or grand jury.

"We know it will be urged that the proceeding authorized by the resolution is not a trial or judicial proceeding, because the Senate does not propose to punish anyone. But to ascertain the guilt or innocence of a person is just as important a part of the judicial function as to punish him; and the Senate have just as much authority to punish a man for treason as to try the question whether or not he has committed it. Under the resolution the committee have power to report that such and such persons have been guilty of treason or other offenses. Here, then, we find a trial and conviction. And though it is not pretended that the Senate has any power to punish crime, yet such a conviction, by blasting a man's character, may, in this as in other cases, become the most tremendous punishment.

"The dangerous nature of the tribunal which the Senate has erected should make them pause before they commit to imprisonment a person who denies its constitutional authority. The examination before the committee, though not so required by the resolution, has hitherto been secret. The people of the United States abhor secret tribunals. Informers have been brought before this secret court. Whose reputation they may have assailed or ruined can not be known till the report of the committee appears. The parties who may have been charged with the highest crimes have had no opportunity of being confronted with the witnesses testifying against them. Every safeguard which the law interposes for the protection of men unjustly accused is broken down in this new tribunal. Some are examined to see if they will not accuse themselves, some if they will not implicate their friends, and others to ascertain their opinions.

"We do not charge the honorable gentlemen of the committee with designed unfairness. We believe they have treated the witnesses before them with great courtesy, and we are sure they desire to protect the persons who are examined against all injurious consequences from their examination. But it is in vain to deny that this new tribunal has some of the worst features of the Inquisition and other secret tribunals. Such must ever be the case when the legislature usurps the function of the judiciary.

"The greatest danger to liberty among us, is the encroachment of one department of Government upon the powers of another, especially of the legislative upon the executive and judicial. This was foreseen by the framers of the Constitution, and sedulously guarded against. If a committee of the Senate can be made a court to try criminal offenses, they can also be invested with power to punish offenders. The next step is as easy as the first. And if the Senate does not now resist, a great stride will be taken toward erecting a great central tyranny in Congress, which will absorb all the reserved rights of the States and of the people.

"We conclude this division of the argument by stating, what can not be disputed, that if the resolution vests an unconstitutional power in the committee, the Senate can have no power to compel the attendance of witnesses.

"If a naked resolution were offered to inquire who set fire to a house, or murdered a person (not a member of the Senate) in the District of Columbia, or had been guilty of any act of treason against the United States in any part of the country, probably there is not a member of the Senate who would have voted for the resolution, or would not have shrunk back from so outrageous a proposal. Yet this is exactly what the resolution we are resisting has done, except that it has authorized the committee to report 'what legislation is necessary for the preservation of the peace of the country,' etc. This presents the question, whether the Senate have, in order to gain information for the purpose of legislation, a right to make an inquisition as to who committed certain crimes. We deny the right. A lawful and constitutional object can not legalize means for effecting that object which are themselves unlawful and unconstitutional. A medical student has a right to study anatomy, but no right to secure a subject by 'burking.' The Senate has a right to collect information to aid in legislation, but no right to establish an inquisition for that purpose.

"We now pass to another division of our argument, in some aspects connected with the former, yet one in which we claim the discharge of our client on a ground entirely independent of it.

"We contend that the Senate has no right to compel the attendance of witnesses, except in cases where this body is invested with judicial or quasi-judicial functions. The Senate is the sole court to try impeachments, by the express words of the Constitution. Hence it can compel the attendance of witnesses on the trial of an impeachment. It can judge of the elections, qualification, and returns of its own members. Hence, when the election of a Senator is contested it can compel witnesses to attend. So, having the power of punishing a member for disorderly behavior, and even of expelling him, in such cases the right of compelling the attendance of witnesses follows.

"But beyond these cases the Senate has no power of compelling witnesses to attend. It is the absolute necessity of the power which gives it as an incident to the trial, taken in connection with the function to which it is incidental. To compel witnesses to attend before a committee to give information in regard to proposed legislation is a power not given by the Constitution. It is not given expressly, and it is not given by implication, because it is not necessary for legislation.

"Nothing misleads so much as false analogies. The Senate bears a resemblance to the British House of Lords, and the House of Representatives to the House of Commons. The legislative functions of these bodies are similar. Hence jurists have sometimes hastily concluded that the whole '*Lex et consuetudo Parliamenti*' applied to Congress and other legislative bodies in this country; that our Legislatures and their members had the power and privileges of the British Parliament and its members; and that all acts which would be regarded as contempts and breaches of privilege in England against the Lords or Commons would also be regarded as such here against the Senate or House.

"But nothing can be more fallacious than this superficial analogy, and everyone acknowledges it the instant the tests are applied. The privileges of the British Parliament and the powers of the Lords and Commons are drawn from the usage and practice of ages. The powers and privileges of the Senate and House are all created by the Constitution, either in express words or by necessary implication. Hence, that certain powers have been exercised by the Lords and Commons does not prove that such powers exist here.

"No power is expressly given by the Constitution for the Senate or House to compel the attendance of a witness before a committee of inquiry preliminary to legislation. Nor is any such power given by implication, because it is not necessary for the purposes of legislation.

"To maintain that the law and practice of the British Parliament are the rule for Congress, would introduce an arbitrary tyranny. Each House would become the final judge of its own privileges, decide, without appeal, who had committed a breach of them, and punish by fine at its discretion, and imprisonment limited only by the length of its sessions. No court of law would have any power to interfere. If a member's servant were committed to prison, it would be a breach of privilege according to the old law in England. And we might even see judges of the Supreme Court brought to the bar of the Senate and committed to prison for giving an offensive decision, as was actually done to Pemberton, chief justice of the King's Bench, by the House of Commons, for rendering a judgment which they regarded as a breach of their privileges. (2 Campbell's Lives of the Chief Justices, 54.)

"Acting on this idea, that the powers of the two Houses were like those of Parliament, the Senate, in 1800, committed William Duane for publishing a libel in the *Aurora* (2 Benton Abr. Debates, 408 to 426), thus not only assuming a power not given by the Constitution, but violating the spirit, if not the letter, of that sacred charter, which declares, in the first article of amendment, that Congress shall make no law 'abridging the freedom of speech or of the press.' What is left of the freedom of the press, if the Senate, without passing a law, can decide without appeal what is a libel upon it, and punish the same at its discretion?

"The Senate, in Duane's case, did exactly what the House of Commons did in Sir Francis Burdett's, whom they committed to the Tower for publishing a libel on the House. He strongly resisted this outrage, and sued the Speaker of the House and the Sergeant-at-Arms. In that celebrated case the court considered it was well-established law in England that the House was the final judge of its own privileges, and might punish for contempts at its pleasure. (Burdett v. Abbott, 14 East's Rep., 1.)

"The enormous length to which the powers of each House of Congress would be carried by admitting for a moment the British parliamentary law as a source of power, demands that every power claimed by either House should be strictly questioned, and, if it has no foundation in the Constitution, be rejected. So enormous were the claims of privilege of both Lords and Commons, that they have not only been restrained by express statute, but moderated in practice.

"The Constitution of the United States not only created a new form of government for the people, but for the first time gave them an actually national Government. The powers granted by it have no other foundation than the letter of the instrument. They are limited with the greatest jealousy and are not to be extended by implication.

"The tenth article of amendments to the Constitution says: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' We search the Constitution in vain for any delegation of power to compel a witness to appear before a committee of the Senate appointed to investigate a subject as preliminary to legislation.

"The fourth article of the amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.' If this provision has any vitality, or is ever to be applied, surely it ought to be applied in the present case. Have the Senate committee a right to drag a man one, two, or three thousand miles from his family, however inconvenient or ruinous it may be to him, and this merely to prosecute an investigation in which his testimony is not really necessary for any purposes of legislation? Can any seizure of the person be more unreasonable? Yet the letter and spirit of our great charter are thus to be trampled down by a constructive power.

"By the sixth article of amendment, every accused person is entitled to a speedy and public trial by a jury of the State and district where the crime has been committed. The hardship and injustice of taking a man out of his own State for trial are so apparent that the people would not submit to it. Could they have intended to allow any citizen to be torn from his home whenever a committee of the Senate demanded it, and to have him submitted to an inquisitorial examination (a trial in fact), but one in which he is deprived of all the protection which the Constitution would give him in a regular court of justice?

"The Constitution enumerates powers and privileges which the Senate enjoys independently of the House, and those which the House enjoys independently of the Senate. They are expressed with great care, with the manifest purpose of defining and limiting them, and preventing the claim of the monstrous and arbitrary powers and privileges that have been exercised by the Lords and Commons.

"The Senate has 'the sole power to try all impeachments.' (Art. 1, sec. 3.) But it can not, like the House of Lords, order a convicted party to be executed, or even fine or imprison him. The punishment ordered by the Senate can not 'extend further than removal from office and disqualification to hold any office of honor or profit under the United States.' And a conviction can not take place 'without the concurrence of two-thirds of the members present.' Everything in these provisions shows an anxiety to insure a fair trial and a moderate punishment. Can the Senate, by a summary process for contempt, inflict a heavier punishment on a witness who doubts its authority than it can on a great public offender, duly tried and convicted? Each House is the judge of the elections, returns, and qualification of its own members; can compel the attendance of absent members; determine the rules of its proceedings; punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. (Art. 1, sec. 5.)

"Here again is the same design exhibited to define and limit powers. Each House is the judge of the qualification of its members, that is, whether they have the qualifications required by the Constitution; but it can not create an arbitrary disqualification, as the House of Commons did in the case of John Wilkes, and declare that a man who has been expelled is afterwards ineligible. A member can only be expelled by the concurrence of two-thirds of the members present. A bare majority can expel from the House of Commons.

"The members of both Houses are, 'in all cases, except treason, felony, and breach of the peace, privileged from arrest during the session of their respective Houses, and in going to and returning from the same.' This is an important privilege, but is nothing compared with those which have been sometimes arrogated by the House of Commons.

"The powers exercised by the Houses of Parliament have in many instances been as ludicrous as they were tyrannical. A mere enumeration of some of them, for the period of about a century after the Restoration, will sufficiently illustrate the danger of blindly following the parliamentary precedents of Great Britain. The following cases, among others, were between the years 1660 and 1697 voted breaches of privilege:

"Delivering ejectments to members of Parliament, fifteen cases.

"Entry on their estates, twenty-four cases.

"Pulling down a scaffold at Mr. Butie's.

"Lopping Mr. Scawen's trees.

"Detaining the goods of members of Parliament, ten cases.

"Stopping up their lanes, two cases.

"Driving their cattle, two cases.

"Under the date of 1606, a person named Bigland is voted guilty of a breach of privilege, in taking the horse of Mr. James, the member from Bristol, from an inn stable, and riding it post.

"In 1700 Rogers, an attorney, was committed for breach of privilege in sending an exorbitant bill of costs to the gunners at Portsmouth.

“From 1714 to 1761, the following instances of alleged breaches of privilege occur:
 “Injuries to the property of members of Parliament, fifty-one cases; of which the following may be regarded as illustrations:

- “Plowing Mr. Bowles's land.
- “Killing Lord Galway's rabbits.
- “Assaulting Sir W. Wynn's porter in Downing street.
- “Fishing in Mr. Joliffe's pond.
- “Erecting a building, posts, and rails on Sir Cordell Firebrace's waste, in Suffolk.
- “Digging in Earl Verney's ground, and carrying away a tree.
- “Entering into possession of a cellar in the occupation of Charles Fitzroy Scudamore's tenant.

“For this last offense, in March, 1760, only sixteen years before the Declaration of American Independence, Sir Richard Perrot was ordered into the custody of the Sergeant-at-Arms for a breach of privilege. (See 9 Ad. & Ellis' Rep., pp. 13, 14, in note.)

“The Constitution also provides that the Senators and Representatives, ‘for any speech or debate in either House,’ ‘shall not be questioned in any other place.’ (Art. 1, sec. 6.) The Senator or Representative is liable to no action for words spoken in the House. This is a great and all-important privilege, but it falls far short of what has been exercised by the House of Commons.

“Here we have powers and privileges clearly granted, but carefully limited, in order that they may not be extended by the false analogy of British precedents. Such an enumeration, according to the familiar maxim ‘*expressio unius est exclusio alterius*,’ founded in the clearest reason, excludes all other powers and privileges. No express power to commit a witness for contempt is given. Where either House has judicial or quasi-judicial powers, as it has in several of the cases already adverted to, to which might be added that of an inquiry into the conduct of a public officer by the House, to see if an impeachment ought to be made, and perhaps others, the judicial power of committing a contumacious witness follows as a necessary incident.

“But when we come to committing a witness because he does not appear before an investigating committee who are seeking information preliminary to legislation, then the only ground for sustaining the power is a supposed necessity. This necessity, proverbially the tyrant's plea, must be carefully scrutinized. The legal maxim that ‘*quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa esse non potest*’ (when the law grants anything, it appears to grant that without which the object of the grant could not exist), does not apply here. It only extends to cases of absolute necessity, when the power granted can not be executed at all without admitting the exercise of the power claimed. A familiar example may be illustrated thus: If A gives B a simple power to sell and convey an estate, it does not give B power to make any covenant in regard to the title, however convenient or appropriate it might be, but it gives B power to sign A's name, and affix a seal and deliver the deed, because the conveyance can not otherwise be made.

“However convenient or expedient it may sometimes be to compel a witness to come before a committee like the present, it is never absolutely necessary. Legislation, no doubt, would go on just as well without any such power. Take the common case of a question as to altering the tariff. Parties interested will always be found voluntarily to give the required information. It is just so in the present case. Who can doubt that a bill for protecting the peace of the Union, etc., can be drafted just as well without coercing the attendance of a single witness?

“The objects of a court and of a legislature are entirely different. The court, in trying a case, is seeking to ascertain a particular fact or facts usually known only to one or a few persons. The power of compelling the attendance of such persons is absolutely essential to the administration of justice. On the other hand, legitimate legislation never depends upon a fact or facts known only to one or a few, or the opinion of one or a few; but such facts and opinions are generally matters of common notoriety usually brought before the legislature voluntarily, and can always be obtained without coercion.

“We need say nothing in regard to claims against the United States. These obviously involve questions of a judicial character, which has led to the creation of the Court of Claims. When a committee of either House is compelled to examine such claims, we would not dispute the necessity of a power to coerce witnesses.

“If it were not for the false analogy which leads men to regard our legislative bodies as the exact parallel of the British Parliament, it never would have occurred to anyone that a committee making inquiries for the purpose of legislation could exercise the functions of a court of justice by compelling the attendance of witnesses.

“The distinction between the powers of the Lords and Commons and those of a legislative body created by a written charter is presented in a strong light in the case of *Fenton v. Hampton*, 11 Moore's Privy Council Reports, 347. The legislative council of Van Dieman's Land was organized by an act of the British Parlia-

ment. It is the legislature of the island, with full legislative powers. The plaintiff was summoned to attend as a witness before a committee of investigation of the legislative council. He did not attend. He was then ordered to appear before the bar of the council. He still neglected to comply. By a vote of the council, a warrant was issued by the speaker, on which he was committed by the sergeant-at-arms. He then brought an action of trespass against the speaker and the sergeant. The court sustained the action. Flemming, the chief justice of the island, gave a very able and learned opinion, in which he discussed the powers of the legislative council. He held that the 'law and custom of Parliament' did not apply to a legislature created by a written charter; that all the powers of the council must be sought for in the act of Parliament; that the right of committing a witness for contempt for not appearing before an investigating committee, however well established by long prescription in the British Houses of Parliament, was not given by the statute; that such a power, though it might sometimes be convenient and expedient, was never necessary for the purposes of legislation. From this decision the defendant appealed, but it was affirmed by the privy council, several eminent judges sitting in the case.

"So in *Keilly v. Carson*, 4 Moore's Privy Council Rep., 63, it was held that the house of assembly of Newfoundland does not possess the power to arrest a person with a view to adjudication, on a contempt committed out of the house. A number of the most distinguished English judges also sat in this case, which affords another illustration of the difference between powers resting on custom and prescription and those created by written charter.

"It is established by the powerful argumentation of the case of *Fenton v. Hampton*, from 11 Moore, just cited, that the common law of the Parliament of Great Britain—now invoked by the Senate—is its own, *peculiar, traditional, prehistorical custom*, and therefore its *law*; that it does not find its origin, as the law of the Houses of Parliament, in the bare fact that they are legislative bodies; that the powers this law recognizes are not inherent and incidental powers, pertaining to them simply because they are legislative assemblies. On the contrary, that these powers flow from '*the law and custom of Parliament*,' while the Senate seems to assume that the law and custom of Parliament are the consequences of the powers.

"And further, the case deciding that none of the colonial parliaments or legislative councils ever had, or now possess, those powers, it follows, by necessary consequence, that they did not pertain to our own colonial or ante-revolutionary legislatures. They were not incidental, inherent powers; but they were derived to the *British Parliament* wholly from the traditional law of the *Parliament*; and they pertain only to *that* body (i. e., the Parliament), with whom is the tradition preserved among its own recollections of itself, which have outlived the parchment upon which the law—in theory, at least—was written, and the historical record of its origin.

"The powers, rights, and duties of Congress are not traditional. Their origin is purely historical. Their beginning, their intent, their boundaries, and definitions, are written out on the rolls of the Constitution, and are no more conjectural than the origin of the Constitution itself.

"The question as to how far the powers of the Senate and House, in regard to contempts, were like those of the Houses of Parliament, has not yet been settled by long-continued practice, acquiesced in by the people, and confirmed by the courts. So far from this, as far as our examination has gone, the exercise of such powers has been always resisted. Thus, in Duane's case, who was committed for publishing a libel on the Senate, a large and respectable minority opposed the exercise of the power. (2 Benton's Abridgment of Debates, 407 to 426.)

"So when Randall, charged with an attempt to bribe a member, was arrested and reprimanded by the Speaker of the House, the proceeding was opposed by some of the members. (1 Benton's Abridgment, 622.)

"John Anderson had attempted to bribe a member of the House. He was arrested by order of the House, on a warrant issued by the Speaker, to bring him before that body to answer for this as a contempt. He was in the custody of the Sergeant-at-Arms for several days, and then, after a hearing at the bar of the House, he was ordered to be reprimanded by the Speaker. The reprimand being accordingly administered, he was discharged. The power of the House was in this case earnestly contested by some of its ablest members, among whom were John C. Spencer, of New York, and Philip P. Barbour, of Virginia. (6 Benton's Abridg., 90, 93, etc.)

"Anderson afterwards sued the Sergeant-at-Arms, but the Supreme Court held that the defendant was justified in making the arrest by the warrant of the Speaker. The case, however, does not, as is often supposed, decide that the House has a general power of committing for contempts, or even that they had it in this case; but only that, as the House had in some cases a power of bringing a party before it to answer for a contempt, it was not necessary for the justification of the officer that the warrant should specify what the alleged contempt was.

"In the year 1857, in the course of an inquiry before a committee of the House, raised to try certain members of that body who were charged with corruption, an act was passed to compel witnesses to appear and testify before Congressional committees. The act was passed in great haste, in consequence of a witness refusing to testify. It provided that any person summoned as a witness, by the authority of either House of Congress, to give testimony or to produce papers, upon any matter before either House, or any committee of either House, who shall willfully make default, or who appearing, shall refuse to answer any question pertinent to the matter of inquiry, should, in addition to the pains and penalties then existing, be liable to indictment for a misdemeanor in any court of the United States having jurisdiction thereof, and on conviction should pay a fine not exceeding \$1,000 and not less than \$100, and suffer imprisonment in the common jail not less than one month nor more than twelve months.

"The statute further provided that no witness before either House or any committee should be held to answer criminally in any court, or be subject to any penalty or forfeiture, for any fact or act touching which he should be required to testify, and that no statement made or paper produced by any such witness before either House or any committee should be competent testimony against such witness in any criminal proceeding in any court; and no such witness should be allowed to refuse to testify or produce any paper, for the reason that his testimony or the production of such papers might tend to disgrace him, or otherwise render him infamous.

"This act was made to suit a particular occasion. Messrs. Hale, Wilson, Seward, and Pugh resisted its passage with great ability, and endeavored to amend it, but without success. The object for which the act was made was perfectly legitimate—to aid in examining into charges of official misconduct against members of the House. Hence the objections then brought against its passage probably did not strike so forcibly as they would have done at another time.

"These Senators urged that it was a great outrage and a violation of the established principles of law to compel a man to accuse himself of crime; that no man ought to be called on to disgrace himself; that the proceeding was inquisitorial; and that Congress could not protect a man against a prosecution in a State court for any crime of which he might accuse himself.

"In the House, as well as in the Senate, the passage of the act was resisted. Mr. Seward, in the Senate, offered an amendment to limit the operation of the act to witnesses summoned in cases within the constitutional jurisdiction of the Houses of Congress.

"The debate on this act, both in the Senate and House, as well as the act itself, show that many members regarded the right of punishing contumacious witnesses for contempt by the mere authority of either House was quite problematical. The act was passed because there was a general feeling of the insufficiency of the powers of either House to compel witnesses to attend. The act, however, does not profess to give any new powers to the Houses of Congress. Indeed it might appear that, when the statute says 'in addition to the pains and penalties now existing,' it implied a recognition of some powers over contumacious witnesses to be reserved to each House of Congress. Yet a single glance at the Constitution makes it apparent that, since the passage of the act, the contumacy of a witness cited before a committee is an offense which neither House of Congress can now punish.

"The Constitution provides expressly that 'the trial of all crimes, except in cases of impeachment, shall be by jury.' (Art. 3, sec. 2.) Whether before the passage of the act of 1857 the refusal of a witness to appear before a committee was a crime within this provision needs not to be considered. But since that act has declared it an indictable misdemeanor, it is a crime which can only be tried by a jury. If the Senate, then, adjudge the act committed a contempt, it tries the party without a jury for the very same act for which our client is entitled to a trial by jury.

"The provision of the act of 1857 remits the party accused of contempt of Congressional summons to the judicial tribunals within the jurisdiction of which the contempt was committed.

"The disobedience has become an indictable misdemeanor; grand juries must examine into it, courts must issue warrants of arrest. The accused demand, as of right, a trial by jury, and the courts of law alone can render judgment. It is no sufficient reply to this view to be told that the 'pains and penalties then existing' by law were not abolished. It is true we also read the statute thus. But *by whom* are the 'pains and penalties' to be *adjudicated*? The act of 1857 is perfectly clear in its answer. The fine and imprisonment in the penitentiary are punishments to be imposed *in addition to* the existing 'pains and penalties.' The party accused is, by apt and cautious words, subjected to criminal indictment, and the prosecuting officers are required to pursue him.

"Now it is clear that one tribunal can not try an offender and another impose a part of the punishment; nor can two try him for the same offense; nor can one deal

with him in part and the other in part. The truth is, we submit that under this act Congress has provided by a new law a new forum, a new criminal proceeding, and an additional penalty in place of the old, cumbrous, and unsatisfactory accusation, trial, and punishment by legislative bodies themselves, of contemners of their authority.

"Will it be said in reply that the Senate may condemn a public officer under impeachment, impose the constitutional penalty, and that nevertheless the same officer, as a private individual, may suffer punishment under proceedings by indictment, for the very act on account of which he was impeached? We admit it. But that reply is no refutation of our position; for the Constitution by express words has in that single case permitted such double trial and double punishment; the one to rid the Government of an unworthy officer, the other to protect civil society against an unworthy member.

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; *but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.*' (U. S. Const., Art. 1, sec. 3.)

"Admitting, however, that by the words 'in addition to the pains and penalties now existing,' Congress intended to reserve to both Houses the right to punish contumacious witnesses, even then, we repeat it, they have designed what can not be effected except by a violation of the Constitution, since every contumacious witness is now guilty of a crime, and therefore can only be tried by a jury.

"It is true, that in the case of John W. Wolcott, brought before the House as a contumacious witness in 1858, it appears to have been taken for granted that the statute of 1857 had not diminished the power of the House. But the course pursued in that case has no weight as an authority, since the great constitutional question, whether the action of the House would not interfere with the constitutional right of trial by jury, was never presented, either by Wolcott himself, his counsel, or any representative.

"We regret that the short time we have had to devote to this argument has enabled us to give but a very cursory examination to the debates in Congress, which have touched the great constitutional questions which we wish to present to the Senate. We might have raised another. When the resolution creating the Harpers Ferry investigating committee was passed, the House of Representatives was as yet unorganized. The Thirty-sixth Congress, as a legislative body, had as yet no existence. It was incapable of any legislative action. The Senate, as a part of the National Legislature, could do nothing except organize itself. It could not legislate. Could it, then, institute an inquiry preliminary to legislation? The question is an interesting and important one; but as its decision one way or the other does not appear to our client to endanger the liberties of the citizen, he authorizes us, without any argument, to leave it to the honorable Senate to decide whether the resolution is not, on this ground, a mere nullity.

"To recapitulate: The inquisition delegated to the committee, being an inquiry as to who committed crimes, was a judicial one, and a usurpation of the functions of the judiciary.

"The object of the inquisition being unconstitutional, the Senate could have no power to compel the attendance of witnesses before the committee.

"The investigations being made with a view to legislation can not give the Senate authority to make a judicial inquisition as to the authors of specific crimes, if it would not otherwise have possessed such authority.

"Even had the inquisition been constitutional, still, being for legislative purposes the Senate could not coerce the attendance of witnesses.

"All the powers of the Senate are derived from the Constitution, and not gained by long prescription, like those of the Houses of Parliament in Great Britain.

"The power of committing witnesses for contempt in cases of this kind is not given directly by the Constitution, or by necessary implication, because legislation can be effected by it without any such power.

"This is not a case in which the Senate has judicial or quasi-judicial power; in which case authority to compel the attendance of witnesses as a necessary incident of the power need not be disputed.

"Since the statute of 1857 has made the refusal of a witness to appear before a committee an indictable offense, the Senate can not try any such witness for a contempt, because that would be to try him for a crime without a jury, in violation of the Constitution. We deny, then, the power of the Senate committee to act as inquisitors in regard to crimes. We deny their right to drag our client from his home in New York to testify before them.

"If the Senate can thus usurp some of the functions of the judiciary, what other functions of the judiciary or the executive may they not assume? The liberties of

the people are gone, if the Senate by its own power can create a secret inquisitorial tribunal, and compel any witnesses they please to appear before it.

"The power of punishment for contempt is always arbitrary and dangerous, whether exercised by courts or legislative bodies. The constitutions and the legislation of the United States and of the several States have been constantly aiming to limit and define it. It is dangerous, because the party injured becomes the judge in his own case both of law and fact. It involves, therefore, a violation of one of the first principles of justice, and is only to be sustained by the extremest necessity. We believe that the House and Senate have seldom been called to act in a case of alleged contempt in which the power has not been seriously questioned, and in which, from a just sense of its arbitrary character, they have not aimed to make the punishment light rather than severe. In the cases, for instance, of John Anderson and Gen. Houston, the reprimands of the Speaker of the House appear small punishments compared with the gravity of the charges against them.

"In conclusion we would say that our client, in denying the authority of the Senate to compel him to appear and testify before the committee, has been guided solely by a conviction of right and a sense of duty. We have great confidence that the Senate, on examination, will come to the conclusion that he has been guilty of no contempt, and that they can not sentence him, except by the exercise of an arbitrary power utterly subversive of the Constitution. The honor of the Senate will be best maintained by moderating their assertion of privileges, so that they shall be sure not to invade the rights and liberties of the people.

"The party who has the honor to answer before this honorable Senate seeks to forget himself in the representation of a cause involving private right and public liberty.

"The splendid structure of the common law, the vast body of principles, maxims, and rules which illustrate the science of jurisprudence are not the work of theorists or scholiasts. They comprise the practical discoveries and enunciations of judges and jurists, who were challenged to the task by actual cases and the actual assertion before them of individual rights, and not unfrequently by the humblest citizens or subjects, referring the loftiest tribunals back to the study of the source and extent of their own jurisdiction and powers.

"The respect and confidence due to the august assembly before whom he stands forbid the weakness of apology. He is a citizen of a country common to the Senators themselves. In the attitude he has taken he is serving a cause common to them all. In allowing certain great questions of universal interest and concern to find a trial and discussion in his name and over his person, he feels that he has only performed a duty to the Senate itself, as well as to the country. He knows that an American Senate will never deem the peaceful, respectful defense of a citizen (after the appropriate method) disloyal to his country or contempt of its authority.

"With a full sense of the patriotic purposes of the Senate and of its committee, of the urbanity with which he has been treated in his relations to them and to this inquiry, and with a sense of the burden of inconvenience and misconstruction to which he may be subjected, but guided by a deep conviction of public and private duty, with no wish to avoid responsibility or to sequester the truth, with the most respectful and dutiful intent, he confides himself and his cause to the wisdom and patriotism of a body, the most august which an American can know.

"S. E. SEWALL.

"JOHN A. ANDREW."

In addition to the learned argument of his counsel, as herein submitted, the undersigned would add a few remarks in continuation of his answer to the first interrogatory of the honorable Senate—his purpose being to show, from the writings of the men who constructed the Constitution, what were their views of its scope and bearings, and what state of the public mind of their day it was that led to the adoption of those amendments, in view of which he denies that the honorable Senate can create an investigating committee, with such powers as those under which the undersigned is coercively required to appear and answer. The following pertinent observations are from Washington's Farewell Address:

"It is important likewise," he observes, "that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal, against invasion by the others, has been evinced by experiments, ancient and modern; some

of them in our own country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there *be no change* by USURPATION; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit which the use can at any time yield."

Says Jefferson, in his notes on Virginia: "An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one should transcend their legal limits without being effectually checked and restrained by the others."

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands," says Madison (see *Federalist*, p. 207), "whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

"It will not be denied," says this great man, "that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it." (*Federalist*, p. 213.)

Of the legislative he says (p. 219, *Federalist*): "The tendency of republican governments is to an aggrandizement of the legislative, at the expense of the other departments."

Alluding to State sovereignties, he thus speaks (p. 212, *Federalist*): "The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex."

At page 212 of the *Federalist* he thus continues: "Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with the greater facility *mask* under complicated and indirect measures the encroachments which it makes on the coordinate departments."

In thus quoting from the writings of the fathers of this Republic, the undersigned would show that his expressions of alarm at the tendencies of such proceedings as the present are not unwarranted by the recorded wisdom of the men who fought for the liberties we so happily inherit. When the great constitutional expounder of a past century penned these prophetic lines, the last hereinabove quoted, it seems as though the eye of the seer must have penetrated the uncertain dark, and through the solid issues of four-score years have beheld, as with the wisdom of God, the ominous events of the passing hour!

The right of a man to himself, this day virtually called in question!

The fourth of the amendments to the Constitution this day virtually denied!

The dignity of an American citizen—his claims to personalities and to selfhood—maintained by a recurrence to common-law principles and to rudimental truths of natural right that underlie the bases of all government, and that involve the essence of all law.

In the estimate of some—in the estimate of men whose visions are bounded by the expediences of the fleeting, present hour—the undersigned will doubtless be regarded as a disturber of interests paramount to the eternity of principles. God permits mortals to behold their work, not in the future, but in the past alone. Says Francis Lieber, in his "Legal and Political Hermeneutics" (p. 233): "Hampden brought one of the most momentous points in all constitutional history to an issue, and wagered his property and all *for thirty shillings sixpence*; and his trial for the ship money must be considered as a more important chapter in British history than some whole reigns. Let us take him as good authority, how important, in the *higher* politics, the principle is, no matter how insignificant its direct operation at the moment may be. Political, like moral, importance depends upon the principle, not the value at issue. Judas was not the better for taking but thirty pieces of silver."

By one of the most remarkable contrasts in human affairs, the undersigned, who has been summoned to appear and testify before a committee of the honorable Senate of the United States, because of his supposed knowledge of or complicity with a public transaction, amounting in the judgment of some to an attempt to subvert the Government and Constitution, now finds himself at the bar of the honorable Senate, pleading for the integrity of the Constitution and for the rights of the people.

No man can read the pages of the *Federalist*, or dwell upon the luminous *dicta* of Madison and his compatriots, without realizing the intense interest which the fathers had in their work, the fondness with which they regarded it, and the jealous criticisms with which, from every standpoint, they contemplated its workings. The interplay of its functions, the harmony of its parts, and the wonderful equipoises which their fidelity and sagacity distributed through the whole, render it a marvel of jurisprudential mechanism that challenges the profoundest admiration,

and may be justly said to entitle the authors of it to the undying gratitude of their countrymen, and to the homage of the world.

To lay sudden and violent hands upon this ark of a people's safety—even inconsiderately—may be regarded as a sort of sacrilege, paralleled only by those of ancient time, who, for their presumption, were smitten instantly by the jealous anger of an offended Deity.

How deeply our fathers feared, and how justly, too, the encroachments of one department of government upon another, let the automatic checks and balances, contrived and introduced by their prophetic skill, attest.

Precisely here, and to-day, if the position of the undersigned be sustainable, is the integrity of this Government jeopardized. Precisely here, and because as a citizen of this Republic he has resisted that which, in conscientious conviction, he could not but regard as the most alarming occurrence in the history of the administration of the Government since the hour of its inauguration, is he here at the bar of the honorable Senate of the United States, a compelled witness, rather to the lapsed condition of the Government itself than to any treason among the people.

The undersigned proposes by articles four, five, six, nine, and ten, of the amendments, in their connection with each other, and as illustrated by the writings of the founders of the Constitution, to prove that *witnesses* are therein protected against the exercise of all such powers as those which are claimed by the select committee of the honorable Senate in the present proceedings; for he has yet to learn that in order for a citizen to avail himself of these safeguards of the Constitution, he must first become a criminal. The obstacles to the adoption of the Constitution it is not necessary to advert to. But the reasons for the amendments we must not overlook. A very superficial glance at these articles is sufficient to satisfy any mind that the sentiment which demanded them was an earnest one, and that it was founded on a jealousy and distrust of the powers of an overshadowing central government, geographically as well as sympathetically, at a distance from them; that the inhabitants of the former confederated States were not willing to sink their State citizenship in any national ownership. In their own States they were at home and felt secure, and were secure; but what this new and unknown colossal power might be inclined to do with them, opportunity being given, they did not know. Of one thing they were conscious—they knew that they feared power—despotic power—irresponsible power. They feared inquisitorial power; they lived too near the generations who had suffered its cruelties not to fear it. They determined to protect themselves and their children against it. The Constitution, as adopted, left them exposed. They murmured. "Inquietude," as Washington expresses it, prevailed, and measures were taken to assure them. In Washington's inaugural we find the following passage:

"Besides the ordinary objects submitted to your care, it will remain with your judgment to decide how far an exercise of the national power delegated by the fifth article of the Constitution is rendered expedient at the present juncture, by the nature of objections which have been urged against the system, or by the degree of inquietude which has given birth to them. Instead of undertaking particular recommendations on this subject, in which I could be guided by no lights derived from official opportunities, I shall again give way to my entire confidence in your discernment and pursuit of the public good; for I assure myself that, whilst you carefully avoid every alteration which might endanger the benefits of a united and effective government, or which ought to await the future lessons of experience, a reverence for the characteristic rights of freemen, and a regard for the public harmony, will sufficiently influence your deliberations on the question; how far the former can be more impregably fortified, or the latter be safely and advantageously promoted?"

May it please the honorable Senate, the undersigned, in his opening and in answer to the first interrogatory, has made the assertion that such powers as those claimed in this case by the honorable Senate's committee were, in his judgment, to be resisted, not only because unconstitutional, but because contrary to reason. Lord Coke was for holding laws void that were *contrary to reason*. Chancellor Kent (Comment. III, 448) says: "While we admit this conclusion of the English law (namely, that the will of the British legislature is the supreme law of the land, and demands perfect obedience), we can not but admire the intrepidity and powerful sense of justice which led Lord Coke, when chief justice of the King's Bench, to declare, as he did in Doctor Bonham's case, that the common law doth control acts of Parliament, and adjudges them void when against *common right* and *reason*. The same sense of justice and freedom of opinion led Lord Chief Justice Hobart, in *Day v. Savage*, to insist that an act of Parliament made against natural equity, as to make a man judge in his own case, was void; and induced Lord Chief Justice Holt to say, in the case of the *City of London v. Wood*, that the observation of Lord Coke was not extravagant, but was a very reasonable and true saying."

In elucidation of the proposition that the Senate's honorable committee exists in violation of the Constitution and in opposition to reason, the undersigned presents the following considerations:

The Constitution of the United States being established "in order," among other great purposes, "to promote the general welfare" and "establish justice," the fundamental powers of government were located in three distinct departments, not to create antagonistic aims, but for a more perfect cooperation to a common end.

Now, where, in pursuance of its functions, either department of Government raises "*inquiries*" that conserve "the general welfare" and "establish justice," the presumption is that such employment of its functions is normal and within the Constitution. But where either department, in the supposed exercise of its functions, raises inquiries that trample down natural right, and, instead of establishing justice, work positive wrong to the people, it must, *a priori*, be held that such can not be a constitutional employment of the peculiar functions of that department of government.

The protection which criminals receive from the Constitution is a protection advanced to the people as distinguished from criminals; because, before the law, and theoretically, all men are innocent until proved otherwise. Thus, though article six of the amendments in its *letter* covers only "accused" persons, those whom the accusation presumptively has made guilty, yet the spirit of it takes in the entire people; it is but a modified expression of the broad principle asserted in article four of the amendments, that "the right of the people to be secure in their persons," etc., "shall not be violated."

Article six is article four applied not less to special *conditions* than to persons. It is an assertion of conditions in which accused persons may avail themselves of privileges as guaranteed to them by article four, in virtue of their rights as of "*the people*."

And my inference from this, in favor of witnesses or other persons not arraigned for crime, is that an innocent person can not consistently with the Constitution be worse conditioned than an accused person.

There might have been another article of the amendments, a thirteenth article, for example, specially adapted to witnesses, as article six is to accused persons; and there might also have been fifty others of like special import, had not so comprehensive a provision as article four been incorporated among those that were adopted; but in the nature of the case, and under the circumstances, and, above all, in view of articles nine and ten, we must regard article four as a generalization of all others involving personal rights, whether expressed or not expressed; and inasmuch as the whole value of article six lies in the fact that it is article four specially applied, it follows that, whatever special conditions of article six apply to any other class of "the people," such special conditions belong to such other class in virtue of the general protection extended to them by article four. Hence, in reference to personal rights, coercive powers that may not constitutionally be exercised against "*accused persons*," may not be exercised against witnesses; may not be exercised against suspected persons; may not be exercised at all.

Before applying these principles of interpretation to the case in hand, the undersigned would observe that it must not be assumed that clause third of section two of article three of the Constitution, together with article six of the amendments, were designed merely or primarily to "promote the general welfare," by convicting the guilty with more facility; on the contrary, it must be assumed that this provision is primarily designed to protect the innocent, on the axiom that it is better that ninety-nine guilty persons escape than that one innocent person be made wrongfully to suffer. In other words, the first object of the due administration of justice is to shield the innocent. So that wherever we find proceedings that overlook this clear purpose of administrative justice, we may, without further warrant and without further inquiry, pronounce them, upon the principle laid down by Lord Coke, null and void, as being "*contrary to reason*."

As primarily the administration of law is to protect the innocent, so the institution of law is primarily to keep society in innocence.

If the administration of law may not trample down natural right and expose the innocent to wrong, even to pursue and to convict the guilty, surely the mere institution of law can not be presumed to.

Just laws presume just means of legislation. Hence, when in the endeavor to institute laws, the legislative means employed are found to be in violation of the essential purpose of law, namely, to shield the innocent, we are again authorized upon the principle laid down by Lord Coke, without further inquiry and without further warrant, to pronounce such means "void," because "*contrary to reason*."

Now, then, to make a practical application of these principles. Inasmuch as to enforce and maintain law can not be of less moment than to institute it; and inasmuch as every personal right and privilege that is secured against judicial misuse of power must be equally good against the misuse of legislative authority, it fol-

lows, even on the assumption that the legislative branch of Government may inquire into the facts of specific crime; and may employ coercive inquiry to accomplish the purpose of the inquest, that the legislative branch of Government can not have less constitutional restraints upon its powers than those which hold the judiciary in check. The checks upon governmental powers, imposed by the Constitution, are, and were meant to be, safeguards for the people.

By reference to the limitations of the judicial power, we shall obtain some certain index to the limitations of the legislative; for, whether these limitations to the power of the legislative be or be not expressed in the Constitution, it is sufficient, to decide their existence, that we know the object of them. Were this honorable court-legislative sitting here to-day as a court-judicial, as in cases of impeachment, but with powers beyond impeachment, with all the administrative powers of justice possessed by the judiciary itself, what could it do in the Harpers Ferry case? Could it try, *at Washington*, in the District of Columbia, crimes committed in Jefferson County, in the State of Virginia, and could it try them without a jury? But the Constitution says, "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed." (The *point* of the undersigned, at this moment, not being as to the *nature* of the proposed inquiries but only as to the *mode*, in reference to the rights of witnesses, he waives in this place the question of the *nature* of the inquiries.)

For the sake of the point in question let us also waive the right of trial by jury, and admit that in a case of crime like the one under consideration, this honorable Senate, sitting as a court-judicial with full powers, are conditioned to try this case; and that, in view of the Constitution, they are sitting in Virginia, instead of at Washington; under this supposed condition of affairs, what would be my rights as a witness? What would be the rights of any and every citizen of the United States not resident in the State of Virginia? Why clearly, the court, by some process, would be under the necessity of going to the witness. It could not compel any witness out of the State to come to it. For the court to attempt such a thing would be to so employ its functions as to trample down natural rights that are guaranteed by the amendments to the Constitution. And thus it would come to pass, by the safeguards of the Constitution, that vice would have received protection, while virtue was left to suffer. I think no man can believe that such was the intention of the framers of the Constitution.

SUMMARY.

The Constitution was ordained and established to secure justice, liberty, tranquility, and the general welfare, etc.

In pursuance of which design, the Constitution established a triune Government.

To carry out the design of the Constitution is the separate purpose of each department, and the common purpose of all.

Lest the design of the Constitution should be defeated, the people affixed their bill of rights to it, called the amendments to the Constitution.

The functions of the Government are limited by the amendments.

Coercive processes of every kind and for any purpose are therein forbidden, save in connection with safeguards, that restrict the processes to localities and forms. Absence of safeguards presumes absence of dangers; absence of dangers presumes absence of power to beget them. In whatever department of Government the safeguards are not, there is the presumption that power to require them is wanting.

Where the liberties and privileges of the people are involved, the bill determines what are and what are not powers incident to government.

The Constitution having established both Government and the bill of rights in pursuance of a single design, no antagonism between them is supposable.

The bill being an unambiguous declaration of the rights, privileges, and immunities of the people, and the powers of government being subject always to construction and misconstruction, the former must not be subject to the latter.

The Government, in its essential nature and in the nature of things being subordinate to the bill of rights, its powers must always be construed in favor of the latter.

For people precede governments in the order of events, but their rights originate with them.

Inasmuch, then, as government can not impair, but must exercise its functions in harmony with the people's protecting summary of powers and privileges, the mode and the form of its invasion, to be constitutional, must be expressed and granted in the bill.

Hence, Government is concluded as to any "incident" power, violative of the people's rights, privileges, and immunities, as secured to them by the bill of rights. Such use of power must in the nature of the case be a usurpation and a clear violation of article tenth of the amendments. It is not possible that an "incident"

power of the legislative branch of government should be more extensive than the expressed powers of the judiciary.

The undersigned, having thus given his reasons for not having appeared before the select committee of the honorable Senate, would respectfully answer the

Second interrogatory: "Are you now ready to appear before said committee and answer such proper questions as shall be put to you by said committee?" as follows:

The undersigned has been always ready to *voluntarily* appear at any time, and at any place, and before any committee of the honorable Senate, and is now ready, upon his rights as a man and a citizen being respected, in accordance with the people's bill of rights in the Constitution of his country. He regards himself as a loyal citizen, true to the Constitution because true to the people. To submit to the coercive processes of the Senate's honorable committee, and by thus doing, to acknowledge a power against whose usurpation Washington, Jefferson, Madison, and the framers of the Constitution warned and sought to shield their countrymen, would be an act on the part of the undersigned for which he could find no justification before God or men. He can not do it; his judgment does not approve it; his conscience will not permit it.

All which is dutifully and respectfully submitted.

THADDEUS HYATT.

Attest: W. F. M. ARNY.

WASHINGTON COUNTY, *District of Columbia*, ss:

Personally appeared before the subscriber, a justice of the peace in and for the county of Washington, District of Columbia, Thaddeus Hyatt, of the city of New York, who, being affirmed according to law, acknowledged and declared the foregoing, to which he has affixed his name and seal, to be his answer to the interrogatories propounded to him by the resolution of the United States Senate, adopted March 6, 1860. Given under my hand and seal this 9th day of March, in the year of our Lord 1860.

THADDEUS HYATT.

[L. s.]

Affirmed and subscribed before

JOHN D. CLARK,
Justice of the Peace.

On March 12, 1860, the said witness Hyatt was brought to the bar of the Senate, when Mr. Mason submitted a preamble and resolutions in lieu of those previously offered by him. The preamble recited the facts and declared that the witness had assigned no sufficient excuse in answer to the first question, and in answer to the second had not declared himself ready to appear before the select committee, and had not purged himself of the contempt with which he stood charged. The first resolution directed that the said Hyatt be committed by the Sergeant-at-Arms to the common jail of the District of Columbia, to be kept in close custody until he should signify his willingness to answer the said questions propounded to him by the Senate, and for his commitment and detention the said resolution should be a sufficient warrant, while the second resolution made provision for his appearance before the select committee whenever he should signify his willingness to answer the questions aforesaid (see *Globe*, p. 1100 to 1109).

A long debate followed, in which Senators Sumner, of Massachusetts; Fessenden, of Maine; Hale, of New Hampshire; Doolittle, of Wisconsin; Simmons, of Rhode Island; Crittenden, of Kentucky; Pearce, of Maryland; Davis, of Mississippi, and Mason, of Virginia, discussed the question of the power of the Senate in respect to contumacious witnesses, at the close of which the preamble and resolutions submitted by Mr. Mason were agreed to by yeas 44, nays 10 (see *Globe*, p. 1109).

Mr. Hyatt remained in the District jail until June 15, 1860, when the select committee, through Mr. Mason, made its final report, and, on motion, was discharged from further consideration of the subject. Mr. Mason made a further report, in which, after reciting the fact that the select committee had made their report and been discharged from fur-

ther consideration of the subject, the following order was submitted, viz:

Ordered, That Thaddeus Hyatt, a witness confined in the jail of this city for refusal to appear and testify before said committee, be discharged from custody, and that a copy of this order be delivered to the jailor by the Sergeant-at-Arms as his warrant for discharging said prisoner.

Mr. Sumner made a brief speech, in which appear some interesting points, precedents, and references, at the conclusion of which the said order was unanimously agreed to. The speech of Mr. Sumner is appended on account of its valuable references:

MR. SUMNER. Mr. President, I welcome with pleasure the proposition for the discharge of Mr. Hyatt from his long incarceration in the filthy jail where he has been detained by the order of the Senate. But I am unwilling that this act of justice should be done to a much-injured citizen, without for one moment exposing the injustice which he has received at your hands.

This case, it seems to me, can be made as plain as a diagram.

We must not forget a fundamental difference between the powers of the House of Representatives and the powers of the Senate. It is from the former that the Senator from Virginia has drawn his precedents, and here is his mistake.

To the House of Representatives are given *inquisitorial* powers expressly by the Constitution, while no such powers are given to the Senate. This is expressed in the words, "the House of Representatives shall have the *sole* power of impeachment." Here, then, obviously, is something delegated to the House, and not delegated to the Senate—namely, those inquiries which are in their nature preliminary to an impeachment—which may or may not end in impeachment; and since, by the Constitution, every "civil officer" of the General Government may be impeached, the *inquisitorial* powers of the House may be directed against every "civil officer," from the President down to the lowest on the list.

This is an extensive power, but it is confined solely to the House. Strictly speaking, the Senate has no general *inquisitorial* powers. It has *judicial powers* in three cases under the Constitution:

1. To try impeachments.
2. To judge the elections, returns, and qualifications of its members.
3. To punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

In the execution of these powers, the Senate has the attributes of a court; and, according to established precedents, it may summon witnesses and compel their testimony, although it may well be doubted if a law be not necessary, even to the execution of this power.

Besides these three cases, expressly named in the Constitution, there are two others, where it has already undertaken to exercise *judicial powers*, not by virtue of express words, but in *self-defense*.

1. With regard to the conduct of its servants, as of its printer.
2. When its privileges have been violated, as in the case of William Duane, by a libel, or in the case of Nugent, by stealing and divulging a treaty while still under the seal of secrecy.

It will be observed that these two classes of cases are not sustained by the text of the Constitution; but if sustained at all, it must be by that principle of universal jurisprudence, and also of natural law, which gives to everybody, whether natural or artificial, the right to protect its own existence; in other words, the great right of self-defense.

And I submit that no principle less solid could sustain this exercise of power. It is not enough to say that such a power would be *convenient*, highly convenient, or important. *It must be absolutely essential to the self-preservation of the body*; and even then, in the absence of any law, it may be open to the gravest doubts.

"Doubtless," says Blackstone, "all arbitrary measures, well executed, are *the most convenient*." (Commentaries, vol. 4, p. 350.) But *mere convenience* is not a proper reason, under a free Government, for the assumption of powers not granted; and this is especially the case where the powers are arbitrary and despotic, and touch the liberty of the citizen.

Now, if the present inquiry were in the House of Representatives, and were directed against the President or the Secretary of War, on the ground of negligence or malfeasance at an important moment, it would be clearly within the jurisdiction of that body, which has the *sole* power of impeachment; but it would not come within the jurisdiction of the Senate until it became the duty of the latter body to try the impeachment instituted by the House.

But the present inquiry is neither preliminary to an impeachment, nor on the trial of an impeachment. It has no such element to sustain it. It is precisely the same as if an inquiry should be instituted into the murder of Dr. Burdell in New York, or into the burning of slaves in Alabama, or into the banks of New York, or into the conduct of the supreme court of Wisconsin in alleged obstructions of the fugitive slave bill with regard to all which the Senate has no judicial powers. And yet, it has judicial powers in all these cases, precisely to the same extent that it has in the case of John Brown at Harpers Ferry.

I know it is said that this power is necessary *in aid of legislation*. I deny the necessity. *Convenient*, at times, it may be; but *necessary*, never. We do not drag the members of the Cabinet or the President to testify before a committee *in aid of legislation*; but I say, without hesitation, they can claim no immunity which does not belong equally to the humblest citizen. Mr. Hyatt and Mr. Sanborn have rights as ample as if they were officeholders. Such a power as this—which, without the sanction of law, and merely at the will of a partisan majority, may be employed to ransack the most distant States, and to drag citizens before the Senate all the way from Wisconsin or from South Carolina—may be convenient, and, to certain persons, may seem to be necessary. An alleged necessity, has, throughout all time, been the apology for wrong.

So spoke the Fiend, and with *necessity*,
The tyrant's plea excused his devilish deeds.

Such, according to Milton, was the practice among the fallen angels.

Let me be understood as admitting the power of the Senate where it is essential to its own protection or the protection of its privileges, but not where it is required merely in aid of legislation. The difference is world-wide between what is required for *protection* and what is required merely for *aid*; and here I part company with Senators with whom I am proud on other matters to act. They hold that this great power may be exercised, not merely for the *protection* of the Senate, but also for its *aid* in framing a bill or in maturing any piece of legislation. To aid a committee of this body merely in a legislative purpose, a citizen, guilty of no crime, charged with no offense, presumed to be innocent, honored and beloved in his neighborhood, may be seized, handcuffed, kidnaped, and dragged away from his home, hurried

across State lines, brought here as a criminal, and then thrust into jail. The mere statement of the case shows the dangerous absurdity of such a claim. "Nephew," said Algernon Sidney, in prison, on the night before his execution, "I value not my own life a chip; but what concerns me is that the *law* which takes away my life may hang everyone of you whenever it is thought convenient." It was a dangerous *law* that aroused the indignation of the English patriot. But in the present case there is not even a law—nothing but an order made by a factional part of Congress.

There are Senators here who pretend to find in the Constitution the right to carry slaves into the national Territories. That such Senators should also find in the same Constitution the right to make a slave of Mr. Hyatt or Mr. Sanborn, or of anybody else, merely to aid legislation, is not astonishing; but I am at a loss how Senators who love freedom can find any such right in the Constitution.

I say nothing, now, of the precedents of the British Parliament, for they are all more or less inapplicable. We live under a written Constitution, with certain specified powers; and all these are restrained by the tenth amendment, declaring that

The powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people.

But even the British precedents have found a critic at home, in the late chief justice of England, Lord Denman, pronouncing judgment in the great case of *Stockdale v. Hansard* (1 Adolph. and Ellis, 1), and also in the words of an elegant and authoritative historian, whose life has been passed in one or the other of the two Houses of Parliament; I refer to Lord Mahon, now the Earl Stanhope, who, in his *History of England* (vol. 4, p. 30), thus remarks:

I may observe, in passing, that, throughout the reign of George II, the privileges of the House of Commons flourished in the rankest luxuriance. * * * * So long as men in authority are enabled to go beyond the law on the plea of their own dignity and power, the *ONLY* limit to their encroachments will be that of the public endurance.

Nothing can be more true than this remark. But Lord Brougham has expressed himself in words yet stronger, and, if possible, still more applicable to the present case:

All rights [says this consummate orator] are now utterly disregarded by the advocates of privilege, excepting that of exposing their own short-sighted impolicy and thoughtless inconsistency. Nor would there be any safety for the people under their guidance, if, unhappily, their powers of doing mischief bore any proportion to their disregard of what is politic and just.—*Lord Brougham's Speeches*, vol. 4, p. 344.

With these remarks I quit this question, anxious only that the recent usurpation of the Senate may not be drawn into a precedent hereafter.

ALLEGED IMPROPER INTERFERENCE WITH LEGISLATION OF
CONGRESS—EMPLOYMENT OF MONEY TO CARRY ELECTIONS—
PROTEST OF PRESIDENT BUCHANAN AGAINST PROCEEDINGS
OF HOUSE OF REPRESENTATIVES UNDER “THE COVODE INVES-
TIGATION” RESOLUTIONS.

HOUSE OF REPRESENTATIVES, THIRTY-SIXTH CONGRESS, FIRST SESSION. WILLIAM
PENNINGTON, OF NEW JERSEY, SPEAKER.

This case is included for the reason that it is the first and only one in which the President of the United States protested against the power of either house of Congress to make a proposed investigation, on the ground of its being an invasion or “violation of the rights of the coordinate executive branch of the Government, and subversive of its constitutional independence.”

For message of President Buchanan dated March 28, 1860, making such protest, see Journal, 1-35, p. 618, and Globe of March 29, p. 1434.

On motion of Mr. Sherman, of Ohio, said message was referred to the Committee on the Judiciary, with leave to report thereon at any time. On April 9 following, Mr. John Hickman, from said committee, made a report (No. 394, first session, Thirty-sixth Congress, vol. 3), accompanied by the following resolution, viz:

Resolved, That the House dissents from the doctrines of the special message of the President of the United States, of March 28, 1860; that the extent of power contemplated in the adoption of the resolutions of inquiry of March 5, 1860, is necessary to the proper discharge of the constitutional duties devolved upon Congress; that judicial determinations, the opinions of former Presidents, and uniform usage sanctions its exercise; and that to abandon it would leave the executive department of the Government without supervision or responsibility, and would be likely to lead to a concentration of power in the hands of the President, dangerous to the rights of a free people.

Mr. George S. Houston, of Alabama, and Miles Taylor, of Louisiana, submitted separately their views as a minority of said committee.

The said report was considered, and the foregoing resolution adopted on June 8 following, by yeas 87, nays 40 (Journal, p. 1041; Globe proceedings, p. 2774).

On June 25 the President sent a further message, making an additional protest against the action of the committee and the House, which message, on motion of Mr. Sherman, was referred to a select committee of five members, with instructions to report thereon at the next session of Congress (see Journal, p. 1225, and Globe of June 25, 1860, p. —).

[The select committee appointed did not submit a report, though it was stated in debate during the second session that one had been prepared.]

**BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—
ASSAULT ON REPRESENTATIVE WILLIAM D. KELLEY, OF PENN-
SYLVANIA.**

**THIRTY-EIGHTH CONGRESS, SECOND SESSION. SCHUYLER COLFAX, OF INDIANA,
SPEAKER.**

**CASE OF WILLIAM D. KELLEY, A REPRESENTATIVE FROM PENN-
SYLVANIA.**

This case is included for the reason that the House of Representatives took cognizance of the assault upon Mr. Kelley after Mr. Field had been required by Police Justice Boswell to give bail in the sum of \$500 to answer the charge of assault and battery at the next term of the criminal court for the District of Columbia, and also to give bail in the sum of \$1,000 to keep the peace toward Mr. Kelley, thus establishing a different principle (as well as practice) from that in the case of Samuel Houston in the Twenty-second Congress. (See *ante*, p. 41.)

MONDAY, JANUARY 23, 1865.

* * * * *

Mr. Robert C. Schenck, of Ohio, as a question of privilege, submitted the following preamble and resolution, viz;

Whereas it is understood that on the evening of Friday, the 20th instant, A. P. Field, a citizen of Louisiana, did attempt by language of intimidation, and by bullying, to deter William D. Kelley, a Representative in this House from the Fourth district of the State of Pennsylvania, from the free and fearless exercise of his rights and duties as a member of Congress, and voting and deciding upon a pending subject of legislation, and did follow up the said attempt at intimidation and bullying by an assault upon the person of the said Representative Kelley, thus committing a breach of the privilege of this House: Therefore,

Be it resolved, That a select committee of five members be appointed by the Speaker to inquire into the said alleged breach of privilege; that the said committee have power to send for persons and papers, and to examine witnesses; and that the committee report as soon as possible all the facts and circumstances of the affair, and what order, if any, it is proper for this House to take for the vindication of its privilege and right and duty of free legislation and judgment.

Mr. MALLORY. I raise the question of order that the case set forth by the gentleman from Ohio does not bring the matter within the question of privilege.

The SPEAKER. The Chair would refer the gentleman from Kentucky to the 145th page of the Digest. In the Twenty-second and Twenty-third Congresses it was decided that an assault upon a member was a breach of privilege, and even the use of menacing language toward a member out of the House. The Chair has looked at it since the point was raised by the gentleman from Kentucky, and the various precedents have been there cited by the Journal Clerk of this House.

The House debated the subject at some length (Globe, p. 371 to 375), adopted an amendment suspending Mr. Field from the privileges of the floor until the report be made, and adopted the report as amended.

The committee (consisting of F. C. Beaman, of Michigan; E. H. Rollins, of New Hampshire; James C. Robinson, of Illinois; John D. Baldwin, of Massachusetts, and Dwight Townsend, of New York) on February 7 submitted its report, accompanied by the following resolutions, viz:

FEBRUARY 21, 1865,

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take into custody, wherever to be found, the body of A. P. Field, convicted of a breach of the privilege of the House in the attempt, by language of intimidation and bullying, to deter William D. Kelley, a Representative in this House from the Fourth district of the State of Pennsylvania, from the free and fearless exercise of his rights and duties as a member of Congress, and voting and deciding upon a pending subject of legislation; and in following up the said attempt at intimidation and bullying by assault upon the person of the said Representative Kelley, and forthwith bring him to the bar of the House, and that thereupon said A. P. Field be reprimanded by the Speaker.

Resolved, That so much of the resolution of this House of the 5th day of December last, granting the privilege of the hall to the claimants for seats from the State of Louisiana, as applies to the said A. P. Field, be rescinded.

F. C. BEAMAN.

E. H. ROLLINS.

JOHN D. BALDWIN.

On February 21, following, Mr. Beaman called up the said report, and after debate (Globe, 971 to 974) the House, by a vote of yeas 82, nays 48, adopted the first resolution, and by yeas 71, nays 64, laid the second resolution on the table.

FEBRUARY 22, 1865.

The Sergeant-at-Arms appeared at the bar of the House, having in custody A. P. Field as directed by the resolution of the House yesterday.

The said A. P. Field having been arraigned,

The Speaker said:

Mr. Field, the duty has been devolved upon me, by the Representatives of the American people to express to you their condemnation of the act for which you have been tried before a committee of their members, and ordered to be reprimanded at the bar of the House by their presiding officer.

In this Hall assemble those who have been chosen by the suffrage of their constituents, throughout the continental area of the Republic, to deliberate and decide upon the gravest matters of national concern. Differing often widely from each other, their acts and votes on many questions may prove distasteful to large portions of the people for whom they legislate; and the Constitution has therefore wisely declared that no Representative shall be questioned elsewhere for words spoken here in debate. Accountable as every Representative is to this body with which he is associated, to which is reserved the right of expulsion for whatever renders him unworthy of its membership, the House has repeatedly decided that menace, or assault by one member upon another, is a flagrant breach of privilege, rendering the offender amenable to whatever proper punishment it may see fit to inflict. And while thus subjecting a sworn associate to its discipline, it claims and exercises the right to fix the penalty against those, not of the body itself, who endeavor by threat or attack to interfere with the freest action of its members.

In your case the offense seems more inexcusable because you yourself were a claimant of a seat on this floor, and the question involved in the decision of that claim was one of far more than ordinary importance to the nation and your State. The Representative, who was first denounced and then attacked by you, was not a member of the committee before which the issue was pending and whose report was necessary to bring it before the House. He had himself joined in the unanimous vote by which you were authorized to occupy a seat upon this floor, pending its decision, and to vindicate your claim to membership when the question should come before this body for its action. Yet, without provocation, without any preliminary personal controversy, you first insulted him at a public table and then followed it with a violent attack with an open knife, inflicting a painful wound upon his person,

and with threats that you would shoot him before you went to bed. You must rejoice that your assault did not terminate graver results than those for which you are now arraigned.

It is but just to you to state that the testimony of your friends before the committee declares you to be "a gentleman of correct deportment, kind and amiable in your intercourse with others, and unexceptionable in demeanor except on occasions of indulgence in conviviality;" and the unpleasant position you occupy to-day is, therefore, only another illustration of the exceeding value of that warning voice of inspiration, "Look not upon the wine when it is red, when it giveth its color to the cup; for at last it biteth like a serpent and stingeth like an adder."

Invoking you, finally, to remember that whether as an individual or a legislator "he that is slow to anger is better than the mighty, and he that ruleth his spirit than he that taketh a city," it only remains for me to direct the Sergeant-at-Arms to discharge you from custody

* * * * *

PRIVILEGE OF MEMBERS OF CONGRESS FROM ARREST.

THIRTY-NINTH CONGRESS, SECOND SESSION. SCHUYLER COLFAX, OF INDIANA,
SPEAKER.

CASE OF CHARLES V. CULVER, A REPRESENTATIVE FROM PENNSYLVANIA.

DECEMBER 10, 1866.

* * * * *

Mr. Robert S. Hale, of New York, submitted the following preamble and resolution; which, after debate (Globe, pp. 51-52), were unanimously agreed to, viz:

Whereas it is alleged that Charles V. Culver, of Pennsylvania, a member of this Congress, is detained from his seat in this House under arrest, in violation of the provisions of the sixth section of the first article of the Constitution, and of the privileges of this House: Therefore,

Resolved, That the Committee on the Judiciary is hereby instructed, with all practicable dispatch, to inquire into the circumstances of the case and report the same to this House, and to report to this House whether any breach of its privileges has been committed, and what action should be had thereupon; that the said committee have power to send for persons and papers, to sit during the sessions of the House, and to report by bill or otherwise at any time.

On Thursday, December 20, following, Mr. Thomas Williams, of Pennsylvania, from the Committee on the Judiciary, submitted the following report, viz:

“That they have taken prompt measures, as directed by the House, to ascertain the facts of the case, by bringing the sheriff and jailor of the proper county, along with the honorable Charles W. Culver himself, and the commitment and other records bearing on the question of his arrest and detention as a prisoner, before them.

That the result of their inquiries is, that the said Culver, a member of this House, representing the Twentieth Congressional district of Pennsylvania, was arrested in the month of June last, and during the actual session of Congress, at his home in Venango County, in that State, by virtue of a warrant issuing out of the court of common pleas of that county, under an act of the general assembly of Pennsylvania passed on the 12th day of July, 1842, upon an affidavit filed by a certain James S. Myers, as the plaintiff, in an action of *assumpsit* instituted against the said Culver upon a contract for the return of certain bonds and notes alleged to have been lent to him, charging that the debt incurred thereby was fraudulently contracted by said Culver, and that upon a hearing before the then acting judge of said county, he was committed in default of the required security to the jail of said county,

where he has been since that time imprisoned until the 18th instant, and under which committal only, whereof a copy is hereto annexed, he still continues to be held.

The next point of inquiry under the order of the House was, whether, upon this state of facts, any breach has been committed of the privileges of this House in the arrest and detention of one of its members.

The sixth section of the first article of the Constitution of the United States provides *inter alia* that the Senators and Representatives "shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same."

This privilege, which is borrowed from the law and custom of Parliament, is of such high antiquity in England as to be absolutely lost in the night of time, and to stand therefore rather upon prescription, as claimed by the Commons in the 17th of Edward IV, than on any positive law, although recognized in statutes as old as the reigns of Ethelbert, and Edward the Confessor, and Canute. Its importance to the freedom and usefulness of a legislative assembly are abundantly vindicated in its remote origin and its long and uninterrupted descent to the present time.

The exceptions, moreover, in cases of treason, felony, and breach of the peace are identical in substance, and almost identical in language, with those which have been always recognized in England, and have accordingly been limited in practice to cases strictly criminal, for the reason stated by the Commons in a conference with the Lords on the 17th of August, 1641, that "privilege of Parliament is granted in regard of the service of the commonwealth, and is not to be used to the danger of the commonwealth." And it is accordingly said by Hatsell, that there is not a single instance of a member's claiming the privilege of Parliament, to withdraw himself from the criminal law of the land (p. 206).

With these exceptions, however, it is not to be controverted that the privilege of Parliament may be successfully invoked to protect the person of the member in every case where he may be placed under arrest; and so important are these privileges said to be that they can not be waived, and no man is allowed to plead ignorance of the persons of those who are entitled to them (Cushing on Legislative Assemblies, 224). In Wellesby's Case (2 Russell and Mylne, 666) it was declared by the lord chancellor to be the plain, obvious, and intelligible rule that with respect to everything which is in its nature *criminal*, privilege of Parliament is no protection; but with respect to everything in the nature of *civil* process, whatever may be the technical and outward form of that process, such privilege will inure to protect the party. And it is elsewhere laid down that, "in regard to civil process—that is, proceedings instituted for the enforcement of a civil right—no doubt privilege protects, whether the process be original, mesne, or final, and whether the proceeding be by action at the suit of an individual, or information, or other process at the suit of the public."

Taking the rule, then, as stated here upon the highest authority, to be the correct one, it is very clear to your committee that the arrest made in the present case does not fall within any of the exceptions specified in the Constitution. The case out of which it arises is a civil suit for the recovery of damages in an action sounding in contract. The process issued is but a warrant authorized by an act of assembly abolishing imprisonment for debt in cases where fraud is charged as an ingredient in the contract, and its effect is only to require the defendant

to pay or secure the debt, or give security not to remove or dispose of his property in fraud of his creditors, or that he will apply within thirty days for the benefit of the insolvent laws of the State. It is, therefore, in every view, but mesne or interlocutory process, auxiliary to the main object, which in the collection of a debt, or perhaps, more properly speaking, the recovery of damages for a breach of contract. It is, indeed, no more in substance than a substitute for the *capias ad respondendum* in cases where the old remedy was intended to be preserved. And this is precisely the construction which it has received from the supreme court of Pennsylvania in two several cases in which they have declared it is "but simply an arrest for debt," "a process to hold to bail" in an action *ex contractu*—"collateral and in aid" of it, without the features of a summary conviction—that the fraud imputed is but a private injury which modifies the ordinary private remedy; and that the act which authorizes it is nowise penal, nor the proceeding itself a criminal one. *Goslin v. Place* (8 Casey, 320); *Berger v. Small* (3 Wright, 315). Unless, therefore, there was something in the time and place of arrest to take the case out of the protection of the Constitution, the arrest and detention were manifestly irregular.

By the terms of that instrument the privilege of members is limited to the time of their attendance at the sessions of their respective houses and in going to and returning from the same, and it is conceded that Mr. Culver was neither in actual attendance here nor going to or returning from the seat of government at the time when he was arrested. But these words are entitled to and have always received a liberal construction, for the benefit of the people, who are the parties interested in the attendance of the member, and the unembarrassed performance of his duties. Indeed, the Parliament itself, which is the sole judge, as it is the zealous guardian, of its own laws, customs, and privileges, has been always careful to avoid any precise definition of those privileges lest it might result in an abridgment of them in the future. Thus, in regard to the time allowed for going and returning, although it has been generally considered to extend to forty days in either case, they have refused to determine any more than that it shall be a *convenient* one. There is no question here, however, as to the *duration* of the privilege. The arrest was made during the last session of Congress, and the detention continues during the present one. Whether he was actually here or not when arrested, or whether it was his intention to be in his seat at the present session, can make no difference. It is his duty to be here, as it is the right of Congress and his constituents that he should be, and his power to perform that duty is not to be abridged because he might choose to neglect it. Cushing remarks, "that the personal privileges of members continue in full force notwithstanding their absence either with or without leave of the assembly, in the same manner and to the same extent as if they were present, for otherwise it would be in the power of a member by his own act or fault to oust the assembly of its right to his attendance and services" (226); and this is reason. It is no answer, therefore, to the charge of a violation of his immunities that he was not in actual attendance at the session of the House at the time of his arrest.

But if it were even true that he was without a privilege, which it is settled that he could not waive without leave (3 Gray, 140, 222), and therefore lawfully arrested during the session of the House, because he happened to be at home, it would not authorize his detention now. It is unquestionable law that a member arrested and imprisoned on civil process during vacation, or at any other time when not entitled to

assert his privilege, is entitled to his discharge from such arrest and imprisonment on the assembling of the body to which he belongs; and the records of Parliament abound with cases where the privilege has been allowed, although the member was in custody before he was returned.

It being, then, the conclusion of your committee that upon the facts shown, and the law as applicable to them, the case referred involves a clear breach of the privileges of the House, the next and only remaining question is, what action is to be taken thereon, or in what manner and by what process are the rights and privileges of this body to be vindicated?

On this point there is no difficulty. In early times it was the practice of Parliament, in cases of arrest on *mesne* process, to direct the Speaker to issue his warrant for a writ of *supersedeas* or privilege, or a writ of *habeas corpus*, returnable before the Parliament itself. During the reign of James I, the usage prevailed for the Speaker to write letters to the judges to stay proceedings, and sometimes to send his warrant to the parties themselves, who with their attorneys, who commenced the action, were brought by the sergeant to the bar of the House (May, 136); but the Court of King's Bench, in the time of Charles I, declared that it was against the oaths of the judges to stay judgment in any case, and the practice was discontinued. In 1625, however, the Commons declared that "the House hath power, whenever they see cause, to send the sergeant immediately to deliver a prisoner," and accordingly writs of privilege have ceased to be used, and the practice of releasing the prisoners directly by warrant, or by sending the black rod or the sergeant, in the name of the House, to demand them, has been continually adopted (May, 115). In 1707 the sergeant was sent with the mace, as his symbol of authority, to the warden of the fleet, who readily paid obedience to the orders of the House, and discharged Mr. Asgil, a member, then in execution; and peers and peeresses, as well as members of Parliament, are now discharged directly by order or warrant, and the parties who caused the arrest sometimes visited with censure and punishment. The general course, however, in modern times is to make an order of discharge, and to signify the same, properly authenticated by the clerk, to the parties who have the custody of the prisoner, and who, upon their refusal to obey, may be proceeded against as for contempt; and this is suggested by an American author as perhaps the only appropriate remedy here (Cushing, 227). Your committee can see no reason, however, for the issue of an order to which no answer can be received but absolute obedience, where, in case of contumacy, an attachment for contempt would only result in the punishment of the delinquent, without effecting the object aimed at, which might, at any rate, eventually require a direct exertion of the powers of the House upon the person of the prisoner. They would therefore advise the more summary, simple, and complete, and less circuitous remedy of immediate deliverance by the hands of its own officer, and they accordingly recommend the passage of the following resolution:

Resolved, That the Speaker be directed to issue his warrant to the Sergeant-at-Arms, commanding him to deliver forthwith the honorable Charles V. Culver, a member of this House, detained, as it appears, under *mesne* process issuing out of the court of common pleas of Venango County, in the State of Pennsylvania, in a civil suit instituted therein at the instance of a certain James S. Myers, from the custody of the sheriff and jailer of said county, or any other person or persons presuming to hold and detain the said Culver by virtue of such process,

wherever he may be found, a copy of the said warrant, duly authenticated by the Clerk of this House, being first delivered to the party or parties in whose custody he may be, and to make return to this House of the said warrant, along with the manner in which he may have executed the same."

VENANGO COUNTY, ss:

The Commonwealth of Pennsylvania to the sheriff and jailer of the County of Venango, greeting:

Whereas a suit has been brought by James S. Myers against C. V. Culver in the court of common pleas of said county, which is now pending therein; and whereas the said James S., on the 12th of June, 1866, made complaint under oath setting forth that the debt was fraudulently contracted by the said C. V. Culver, whereupon a warrant was issued for the arrest of the said C. V. Culver, who was brought before Hon. Isaac G. Gordon, president of the Twenty-eighth judicial district of Pennsylvania, by whom the said warrant was issued for a hearing on the 27th day of June instant, when the parties offered evidence in part, and the hearing was continued over until the 28th of June instant, when, after hearing the evidence and counsel for the defendant, it was, upon due consideration of the case by the said judge, considered and determined by him that the allegations of the complainant are substantiated, and that the said C. V. Culver did fraudulently contract the debt for which the said suit is brought: Therefore—

You are hereby commanded to take the said C. V. Culver and commit him to the common jail of the said county of Venango, and there detain him until he shall be discharged by law.

Witness the hand and seal of the said judge at Franklin, this 28th day of June, A. D. 1866.

ISAAC G. GORDON,
Pres. Judge.

A true copy of the original mittimus produced by Cyrus S. Mark, jailor of Venango County, Pennsylvania, and referred to in his examination before the Judiciary Committee.

Attest:

E. G. BOWDOIN,
Clerk of the Judiciary Committee.

The said resolution accompanying the report of the committee was unanimously agreed to without debate. (See Globe, p. 225.)

**BREACH OF PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—
IMPRISONMENT AFTER ADJOURNMENT OF THE SESSION—
ASSAULT UPON REPRESENTATIVE CHARLES H. PORTER, OF
VIRGINIA.**

FORTY-FIRST CONGRESS, SECOND SESSION. JAMES G. BLAINE, OF MAINE, SPEAKER.

CASE OF PATRICK WOODS ALIAS "PAT DOOLEY."

This case is included for the reason that it is the only instance where a person has been imprisoned by order of either House of Congress, such imprisonment continuing after the adjournment of the session. An important ruling was made by Speaker Blaine when the matter, as a question of privilege, was presented to the House. A question of order having been made that the resolution submitted by Mr. Ward did not present a question of privilege, Speaker Blaine held that—

Any assault on a member, which that member, in his capacity as such, brings to the attention of the House, must be ruled as a question of privilege. The gentleman from Virginia (Mr. Porter) was absent by leave of the House, and he states that at the time of the assault he was on his return to the House of Representatives for the purpose of attending to his public duties.

It was also decided by the action of the House of Representatives, in this case, following the opinion of Attorney-General Benjamin F. Butler, cited in the case of Gen. Samuel Houston (see *ante*, p. 41), that the power to punish breaches of the privilege of the House was no part of the general jurisdiction of the courts of the country to punish crimes against the laws. At the time this action was taken Woods was under indictment by a grand jury at Richmond "for unlawfully and feloniously assaulting, beating, and wounding Charles H. Porter, with intent to maim, disfigure, disable, and kill the said Charles H. Porter," and under bond awaiting trial.

JUNE 10, 1870.

* * * * *

The SPEAKER. The Chair lays before the House, as a question of privilege, the following communication.

The Clerk read as follows:

WASHINGTON, D. C., *June 10, 1870.*

SIR: On Monday, May 30, I was assaulted on Broad street, in the city of Richmond, Va., under circumstances which I will briefly relate.

While in conversation with Col. J. M. Humphreys, collector of the port, and Col. William C. Tompkins, of Hanover County, we were approached by the person who subsequently assaulted me, and whose name I have since learned is Patrick Woods alias "Pat Dooley." He introduced himself to me in a very friendly manner, apparently, and giving his name as "Pat Woods." I had never seen or heard of him before, but spoke to him pleasantly. When Col. Tompkins separated from us, Col. Humphreys and myself continued our walk up Broad street, Woods accompanying us, though uninvited. I thought nothing of it, however, as I supposed he

desired to have some further friendly conversation with us. Col. Humphreys was on my right, and Woods on my left. We had proceeded but a few steps when, without the slightest notice of warning, I received a terrible blow from Woods across my face, cutting through one side of my nose and rendering me almost unconscious. The opinion of my physician is that brass knuckles or something of the kind were used. Woods followed this up by at least two more powerful blows in my face. He then caught hold of me with the view of attempting further personal violence. I seized hold of him, and exerting all the strength I could command, gave him a whirl which released me. I now realized that the intention was to murder me, and started for the other side of the street. He drew his pistol and said he would kill me. He did not fire, however, as some one partially interfered with him, and besides, I got on the opposite side of a street car which was coming along and had stopped for a moment. After the car started I succeeded in reaching the other side of the street without further injury.

Since the assault I have learned that Woods was one of the police detectives under the mayor of Richmond at the time he attacked me. At the time of the assault I had been in Richmond for several days, and absent by leave of the House, in consequence of the sickness of my wife.

This affair occurred in the afternoon and on the most active business street in Richmond. It was near the theater building, in the very heart of the city.

Some of the foregoing statements are based on the testimony of Col. Humphreys, as I was unconscious a portion of the time.

I am, very respectfully, your obedient servant,

CHARLES H. PORTER.

HON. JAMES G. BLAINE,
Speaker of the House of Representatives.

Mr. JOHN A. BINGHAM. I desire to know if the gentleman from Virginia was at the time of the assault on the way returning to this House?

Mr. PORTER. I was; but was first going to my house.

Mr. WARD. I offer the following resolution:

Resolved, That the Speaker do issue his warrant, directed to the Sergeant-at-Arms attending this House, commanding him to take in custody, wherever to be found, the body of Patrick Woods, alias Pat. Dooley, and the same in his custody to keep, subject to the further order and direction of this House.

* * * * *

A question of order was raised by Mr. Charles A. Eldridge, of Wisconsin, against the resolution; which was overruled by Speaker Blaine, and the resolution was adopted by yeas 126, nays 40 (Globe, p. 4317).

JUNE 11, 1870.

* * * * *

The Sergeant-at-Arms appeared at the bar of the House having in custody Patrick Woods, alias "Pat Dooley," when Mr. John Allison, of Pennsylvania, submitted a resolution, which was agreed to, referring the matter of privilege to the Committee on the Judiciary for examination and report to the House what action should be taken in the premises, and in the meantime directing that Woods be retained in custody by the Sergeant-at-Arms.

On June 25 Mr. Bingham, from the Committee on the Judiciary, reported the following preamble and resolution, and on Wednesday, July 6, 1870, the House proceeded to their consideration, viz:

Whereas Patrick Woods, on the 30th day of May last past, at Richmond, did make a violent, unprovoked, and felonious assault upon Hon. Charles H. Porter, then being a member of the House of Representatives, on his way returning thereto from a leave of absence, and did cut, bruise, and disable said Porter, being then a member of the House, from attending to his duties therein, Woods well knowing that Mr. Porter was then a member of Congress and on his way to Washington, and making such assault because of that knowledge; and whereas said Woods being brought to the bar of the House, and being fully heard in his defense by counsel and witnesses before the Committee on the Judiciary, all the facts before recited fully appeared: Therefore,

Resolved, That Patrick Woods, now held at the bar of the House to answer for a breach of the privileges of the House, for his offense, be, and hereby is, ordered to be punished by imprisonment in the jail of the District of Columbia as other criminals are for three months; and that a warrant in due form, under the hand of the Speaker, be issued to the Sergeant-at-Arms directing the execution of this order.

Mr. Eldridge, as an amendment, submitted the following resolution reported by the minority of the committee:

The Clerk read as follows:

Resolved, That Patrick Woods, now at the bar of this House, charged with an assault upon Charles H. Porter, a member thereof, not appearing to have done said act for words spoken by the said Porter in debate, or on account of his official character or relation to Congress, be forthwith returned to the hustings court of the city of Richmond, Va., there to be dealt with according to law.

The discussion occupied most of the sittings of July 6th and 7th, and was participated in by Messrs. Bingham, Eldridge, S. S. Cox, Burton C. Cook, Michael C. Kerr, George W. Woodward (*Globe*, p. 5253 to 5264 and 5297, 5298, 5299). During that discussion the opinion of Attorney-General Butler, previously referred to and cited by Mr. Bingham, is herewith given, viz:

ATTORNEY-GENERAL'S OFFICE, *June 25, 1834.*

SIR: In answer to the question submitted to me on the memorial of Gen. Houston, who appears to have been indicted, convicted, and fined in the criminal court of this District, for an assault on the person of a member from the House of Representatives after having been previously punished by that House for the same act, as a contempt and breach of privilege, I have the honor to state that, in my opinion, the proceedings of the House constituted no bar to the subsequent indictment and conviction. The fifth amendment to the Constitution of the United States, which provides that no person "shall be subject for the same offense to be twice put in jeopardy of life or limb," does not apply to cases of this sort. Courts and other bodies which have the power of punishing for contempts are invested with that power, and are supposed to employ it for the purpose of protecting themselves in the due exercise of their appropriate functions, and not for the purpose of vindicating the general law of the land, which may also have been violated by the same act. Technically, therefore, Gen. Houston has not been twice tried for the same offense. The act committed by him was one and the same, and it constituted but one indictable offense; and he was, therefore, liable to only one conviction on indictment. But if this act was also a breach of the privileges of the House of Representatives, and a contempt of the House, they had a right to punish him for the contempt independently of the action of the criminal court; and so *vice versa*.

I am, sir, etc.,

B. F. BUTLER.

To the PRESIDENT OF THE UNITED STATES.

Mr. Bingham also referred to the decision of the Supreme Court in the case of *Anderson vs. Dunn*—(see index) as ruling—sustained by such writers as Kent, Story, and Rowle—"that among the implied powers of each House, necessary to the existence of the legislative branch of the Government, is the power to punish breaches of its privileges," and quoted the following extracts from "Rowle, on the Constitution," viz:

A power extending beyond their own precincts, and affecting others than their own members, has been exercised in both Houses, and has been decided in the Supreme Court to be constitutional.

It is a maxim in the practical application of government that the public functionaries should be supported in the full exercise of the powers intrusted to them. Attempts to bribe or to intimidate them constitute offenses against the public. They amount to more than contempts or breaches of privilege against the legislative bodies, and they undoubtedly subject the offenders to the usual course of prosecution and punishment in the courts of law, but this liability does not exclude the immediate jurisdiction of the legislative body. Strong considerations of public policy support it. The people are entitled to the utmost purity and integrity in the conduct of their Representatives. The House is a guardian of the public interests in this respect. It is its duty to make immediate inquiry as to any attempt to assail

the freedom, or corrupt the integrity of any of its members. From the duty to inquire arises the right to punish. It needs not to be devolved on the ordinary tribunals.

It is true that no power to this effect is expressly given by the Constitution, nor does the judicial or criminal power given to the courts of the United States in any part expressly extend to the infliction of punishment for such offenses. But it is not, therefore, to be inferred that no such power exists anywhere. If the courts of the United States would possess it by implication, there is no reason for refusing it to the legislative body itself, unless it can be discovered to be wholly inconsistent with the construction or nature of that body, or with some clause in the Constitution. But the reverse of the first position is the truth. It would be inconsistent with the nature of such a body to deny it the power of protecting itself from injury or insult. If its deliberations are not perfectly free, its constituents are eventually injured. But this power has never been denied in any country, and is incidental to the nature of all legislative bodies. If it possesses such a power in the case of an immediate insult or disturbance, preventing the exercise of its ordinary functions, it is impossible to deny it in other cases, which, although less immediate or less violent, partake of the same character by having a tendency to impair the firm and honest discharge of public duties.

Mr. Eldridge, in discussing the substitute of the minority, cited a number of English precedents, which are given as a matter of interest and information, viz:

The Commons have ordered at various times "that no news letter writers do in their letters or other papers, presume to intermeddle with the debates or any other proceedings of this House." (December 22, 1694.)

That no printer or publisher of any printed newspapers do presume to insert in any such papers any debates or any other proceedings of this House, or of any committee thereof. (February 11, 1695.)

That it is an indignity to and breach of the privileges of this House for any person to presume to give in written or printed newspapers any account or minute of the debates or other proceedings. That upon the discovery of the authors, printers, or publishers of any such newspapers this House will proceed against the offenders with the utmost severity. (February 26, 1728.)

In 1857 Lord Campbell, in a report on privileges of the lord's committee, endeavored to protect reports of parliamentary proceedings, when published *bona fide*, from the law of libel.

Indignities offered to the character or proceedings of Parliament by libelous reflection have always been resented and punished as breaches of privilege. Some have been reprimanded, some committed to the custody of the Sergeant-at-Arms, while many have been confined in the Tower and in Newgate, and fine, imprisonment, and the pillory have been adjudged. (May's Parliamentary Practice, 88.)

December 15, 1756, George King was fined fifty pounds and committed to Newgate for six months for publishing a spurious and forged printed paper, dispersed and privately sold as His Majesty's speech to the House of Parliament.

In 1798 Lambert and Perry were fined fifty pounds each and committed to Newgate for three months for newspaper paragraph highly reflecting on the honor of the House.

In 1559 William Thrower was committed to the custody of the sergeant for a contempt in words against the dignity of the House.

In 1580 Mr. Anthony Hall, a member, was imprisoned, fined, and expelled for having printed and published a libel containing matter of infamy of sundry good particular members of the House, and of the whole state of the House in general, and also of the power and authority of the House.

In 1528 Henry Allyn was committed for a libel on the last Parliament.

In 1643 the archdeacon of Bath was committed for abusing Parliament.

In 1701 Thomas Colepepper was committed for reflections on the last House of Commons.

In 1805 Peter Stuart was committed for printing in his paper libelous reflections on the character and conduct of the House.

In 1810 Sir Francis Burdett, a member, was sent to the Tower for publishing a libelous and scandalous paper reflecting upon the just rights and privileges of the House.

In 1819 Mr. Hobhouse was committed to Newgate for a libel.

February 26, 1838, Mr. O'Connell, a member, was reprimanded at the bar of the House for words spoken at a public meeting charging the committee of the House on elections with perjury.

March 22, 1623, Thomas Mosly was fined one hundred pounds, sent to the pillory, and imprisoned in the Fleet for a libel on the lord keeper.

In 1779 Flower was fined and committed for a libel on the bishop of Llandaff.

In 1834 Bittleston, editor of the Morning Post, was committed for a libel on Lord Chancellor Brougham in the discharge of his judicial duties in the House of Lords.

In 1821 the author of a paragraph in the John Bull newspaper was committed to Newgate for a libel on a member.

In 1832 Messrs. Kidder and Wright, solicitors, were admonished for having addressed to the committee on the Sunderland and dock bill a letter reflecting on the conduct of members of the committee, copies of which were circulated as handbills.

When the Speaker is accompanied by the mace he has power to order persons into custody for disrespect or breaches of privileges committed in their presence without any previous order of the House. (May, '97.)

Mr. Speaker Onslow ordered a man into custody who pressed on him in Westminster Hall.

In 1621 the Commons sentenced one Floyd, who had spoken offensive words concerning the daughter of James I and her husband, the elector palatine, to pay a fine of one thousand pounds, to stand twice in the pillory, and to ride backward on a horse with the horse's tail in his hand. On request of the Lords, Floyd was turned over to them, to be dealt with according to law and privilege, and they sentenced him, that he should be incapable of bearing arms as a gentleman; that he should be ever held an infamous person, and his testimony not to be taken in any court or cause; that he should ride twice to the pillory with his face to the horse's tail, holding the tail in his hand, that he should be branded with the letter K on his forehead, be whipped at the cart's tail, be fined five thousand pounds to the King, and be imprisoned in Newgate for life.

A man named Cranfield was fined five hundred pounds each to four members whom he had slandered.

Lord Saville was committed to the Tower for refusing to name the person who had written a letter to him, which Parliament had thought treacherous.

In 1647 an order was made for several members of the house to take some of the deputies of the sergeant-at-arms and break open doors and seize trunks and papers of one Capt. Vernon.

In 1624 a schoolmaster was examined for an Arian book. The book was burnt by the hands of the hangman. He was confined to Newgate and then banished to the Isle of Scilly.

In *Shirley vs. Fagg* (in 27 Car., 11) the House of Commons maintained that an appeal taken from the court of chancery to the House of Lords by Shirley against Fagg, who was one of their members, was a breach of their privileges.

On appeal by *Crisp v. Valmahoy*, a member, they imprisoned the sergeants and barrister who had pleaded for Crisp, contrary to an order of the house, as a breach of privilege. Certain persons who had trespassed on the fisheries of Admiral Griffith, a member, were found guilty of a breach of privilege and were ordered to stand committed, and were afterwards discharged on being reprimanded, on their knees.

* * * * *

Mr. Benjamin F. Butler, of Massachusetts, moved an amendment striking out the words "three months" and inserting in lieu thereof the words "till the third of March next," which was rejected by yeas 88, nays 89 (p. 5299). The resolution submitted by Mr. Eldridge on behalf of the minority was then rejected by yeas 56, nays 125 (*ibid.*), and after some "filibustering," the rules were suspended and by a vote of yeas 119, nays 54, the preamble and resolution reported by Mr. Bingham from the Committee on the Judiciary were agreed to.

On July 9 the Speaker laid before the House the following papers, which were read and ordered to be entered on the Journal as completing the record, viz:

* * * * *

HOUSE OF REPRESENTATIVES, U. S.,
July 7, 1870.

To NEHEMIAH G. ORDWAY, ESQ.,
Sergeant-at-Arms.

SIR: The following resolution was this day adopted by the House of Representatives, to wit:

"*Resolved*, That Patrick Woods, now held at the bar of the House to answer for a breach of the privileges of the House, for his offense be, and he is hereby, ordered to be punished by imprisonment in the jail of the District of Columbia, as other criminals are, for three months, and that a warrant be made out in due form under the hand of the Speaker, and issued to the Sergeant-at-Arms, directing the execution of this order."

Now, therefore, this is to require you, Nehemiah G. Ordway, Sergeant-at-Arms of the House of Representatives of the United States, to execute the foregoing order of the House of Representatives.

Given under my hand and the seal of the House of Representatives the day and year above written.

[L. S.]

J. G. BLAINE,
Speaker of the House of Representatives.

Attest:

EDWARD MCPHERSON, *Clerk.*

OFFICE OF THE SERGEANT-AT-ARMS,
U. S. HOUSE OF REPRESENTATIVES,
July 8, 1870.

I have executed the within warrant of the House of Representatives upon Patrick Woods by delivering him to the warden of the jail in the District of Columbia, together with an attested copy of said warrant, and with the following further order addressed to him by me, to wit:

"To the warden of the jail of the District of Columbia:

"SIR: Pursuant to the order of the United States House of Representatives, a true copy of which is hereto annexed, you are hereby required to receive Patrick Woods into the jail aforesaid, and him there detain for the full term of three months named in said order of the United States House of Representatives; and you will not surrender said Woods to any authority except that issuing from said House of Representatives until the expiration of his sentence without further orders."

N. G. ORDWAY,
Sergeant-at-Arms, U. S. House of Representatives.

JULY 8, 1870.

I have this day received into the jail of the District of Columbia the above-named Patrick Woods.

JOHN S. CROCKER,
Warden, United States Jail,
Per D. B. MACK.

As showing the authority of the House over the prisoner the following proceedings are taken from the *Globe* of July 13, 1870 (p. 5513):

Mr. BINGHAM. I ask leave to offer a resolution to allow Patrick Woods, now imprisoned by order of the House for a breach of its privileges, to be taken to Richmond to give evidence in the case of one John Gurhiser, now on trial for his life.

The Clerk read as follows:

Resolved, That the Sergeant-at-Arms, or his assistant, John W. Le Barnes, be ordered to take Patrick Woods, now held in imprisonment in the jail of the District of Columbia by order of the House, for a breach of the privileges thereof, to Richmond, Va., there to testify in the court of hustings as a witness in the case of the Commonwealth of Virginia against John Gurhiser, on the 20th day of July current, and that the Sergeant-at-Arms, or his assistant, John W. Le Barnes, shall continue to keep said Woods in his custody, and shall immediately return said Woods to imprisonment in the jail of the District of Columbia after he shall have so testified.

The resolution was agreed to.

* * * * *

The session terminated on July 15th, but the order of the House of Representatives was duly executed.

PRIVILEGES OF THE SENATE—PUBLICATION OF THE TREATY OF
WASHINGTON IN THE NEW YORK TRIBUNE—CONTUMACIOUS
WITNESSES.

UNITED STATES SENATE, FORTY-SECOND CONGRESS, FIRST SESSION. SCHUYLER
COLFAX, OF INDIANA, VICE-PRESIDENT

CASES OF Z. L. WHITE AND H. J. RAMSDELL.

This case is included—and the debate and proceedings quite fully given—for the reason that it was not only without precedent in the history of the Senate, but also on account of the extended discussion—in which many legal decisions and parliamentary precedents are quoted—in respect to the powers of the Senate to continue imprisonment beyond the existing session, on the principle of the Senate being a continuous body, unlike the House of Representatives. (See in this connection case of Thaddeus Hyatt, *ante*, p. 277, and case of Patrick Woods, *ante*, p. 305.)

Although the names of the Senators constituting the select committee are not attached to the report made on May 16 (see *Globe*, p. 846), they appear in a further report made on May 25 (*ibid*, p. 894), with the exception of that of Mr. Sumner, who, it would seem, did not concur therein.

MAY 16, 1871.

[Congressional Globe, p. 846.]

* * * * *

CONTUMACIOUS WITNESSES.

During the executive session held this day the following proceedings occurred, from which the injunction of secrecy has been removed by order of the Senate:

Mr. Carpenter submitted the following report:

The select committee appointed under and in pursuance of a resolution of the Senate of May 12, 1871, as follows: "*Resolved*, That a select committee of five Senators be appointed by the Chair, who shall investigate how, and by whom, the treaty known as the treaty of Washington and other recent proceedings of the Senate in executive session were made public, and that said committee have power to send for persons and papers;" have attended to their duties, so far as they have been able because of the matters hereinafter stated, and ask leave to report, in part, as follows:

In pursuance of said resolution the said committee met in the Capitol on the 15th day of May, A. D., 1871, at 7 o'clock p. m., and one Z. L. White, who had been duly subpoenaed as a witness to appear before said committee, then and there appeared and submitted to be examined as a witness, and was duly sworn by the chairman of said committee. He was shown a copy of the *Tribune*, a newspaper printed in the city of New York, of the date May 11, 1871. He stated that he was a correspondent

of that paper, and that what purports to be a copy of the said treaty in said paper was transmitted by him to said paper for publication on the night of Wednesday, May 10, 1871; that the same was transmitted to said paper from the city of Washington by telegraph; that he obtained the copy which he so transmitted at about 10 o'clock in the evening of May 10, 1871. The witness was then asked, but refused to state, when, where, and from whom he obtained said copy, which he transmitted as aforesaid, resting his said refusal, not upon inability on his part to answer said question, but upon the ground that he was under honorary obligation not to answer the same.

The witness was then directed to retire, and after consultation your committee, being unanimously of opinion that the questions which he had refused to answer were proper questions, and that the witness was under obligation to answer the same, the said witness was recalled, and having been informed by the chairman of the opinion of the committee, and admonished that it was his duty to answer, the chairman of the committee asked the said witness this question:

"From whom did you obtain the printed copy of what purports to be the treaty spoken of by you, which you transmitted to the New York Tribune, and which you have stated you received and transmitted at about 10 o'clock p. m. of Wednesday, May 10, 1871?"

This question the said witness refused to answer, and stated that he refused, not because he was unable to answer it, but on account of his professional honor, and stated that by his "professional honor" he meant that whenever he received any item of news, unless he had the permission of the gentleman or person who furnished it to him, he considered it an honorable thing that he should not divulge the source of such news, and gave no other reason for his refusal. Said witness White also testified that he came to said examination with a fixed purpose not to divulge the source from which he obtained the treaty.

The testimony of said witness, by question and answer, in full, is hereunto attached and marked "Exhibit No. 1."

In further performance of their duties your committee, at the time and place aforesaid, proceeded to examine as a witness one Hiram J. Ramsdell, who had been duly summoned as a witness, and who then and there appeared and submitted himself to be examined as a witness before said committee; and after being duly sworn by the chairman of said committee the said Ramsdell testified that he was an assistant of the said White as correspondent of the said Tribune. He also testified, on looking at a copy of the said Tribune of May 11, 1871, that it contained what purported to be a copy of a recent treaty between the United States and Great Britain; that it was transmitted from Washington to the paper for publication by said White; that the copy which was furnished to be telegraphed as aforesaid was in writing, which was copied from print. He was then asked this question: "Who had the printed copy from which this manuscript was copied?" which question the witness refused to answer.

He stated that he first saw the printed copy in the Tribune office in Washington after 9 o'clock in the evening of May 10. He was then asked this question: "In whose possession did you first see it?" which he also refused to answer, not upon the ground that he was unable to answer it, but because he was "in duty bound as a man of honor not to answer it."

He was then asked this question: "Do you know from whom that printed copy was obtained?" which question he also refused to answer.

He was then asked this question: "Do you know what was paid for it?" which he also refused to answer; and he also stated that as to all the questions which he had declined to answer, he declined not upon the ground that he could not answer.

The witness was then directed to retire, and your committee, on a consultation, being unanimously of opinion that the questions which the witness had refused to answer were proper and that he was bound to answer them, the witness was recalled and informed by the chairman that such was the opinion of the committee, and informed that his refusal to answer to said questions might subject him to proceedings for contempt.

The chairman then said to the witness: "Having made this explanation, I now ask you, as I did before, from whom the printed copy of what purports to be the treaty of which you have spoken was obtained?" This question he also refused to answer. He also stated that he came to the examination with a fixed purpose not to answer any question that should draw from him the source from which that copy of the treaty was obtained; and that he then, of his own judgment, understanding the full circumstances of the case, persisted in his refusal to answer said question.

The testimony of said Ramsdell in full, by question and answer, both before and after he was recalled, is hereto attached and marked "Exhibit No. 2."

The subpoena by which said witnesses were commanded to appear and testify before said committee at the time and place aforesaid, together with the certificate of service thereof, is hereto attached and marked "Exhibit No. 3."

In the opinion of your committee the questions put to said witnesses respectively were proper questions, necessary to make the investigation ordered by said resolution of the Senate, and that each of said witnesses is in contempt of the Senate and merits to be dealt with for his misconduct; and that the dignity of the Senate requires that the pretense upon which the witnesses based the refusal should not be recognized as valid.

Your committee, therefore, recommend the adoption of the following resolutions, namely:

Resolved, That Zeb. L. White, a witness heretofore duly summoned before a select committee of the Senate, and being lawfully required to testify before said committee, and who, as appears by the report of said committee, has refused to answer proper inquiries put to him in the course of the investigation by said committee, ordered by the Senate, be forthwith arrested by the Sergeant-at-Arms and brought before the Senate at its bar by the orders of the Senate, duly issued by the Vice-President under his hand and the seal of the Senate; and that said White be detained by virtue thereof by the Sergeant-at-Arms until he answer for his contempt of the order of the Senate in the matter aforesaid, and abide such further order as the Senate may make in the premises.

Resolved, That Hiram J. Ramsdell, a witness heretofore duly summoned before a select committee of the Senate, and being lawfully required to testify before said committee, and who, as appears by the report of said committee, has refused to answer proper inquiries put to him in the course of the investigation by said committee, ordered by the Senate, be forthwith arrested by the Sergeant-at-Arms and brought before the Senate at its bar by the orders of the Senate, duly issued by the Vice-President under his hand and the seal of the Senate; and that said Ramsdell be detained by virtue thereof by the Sergeant-at-Arms until he answer for his contempt of the order of the Senate in the matter aforesaid, and abide such further order as the Senate may make in the premises.

[Exhibit No. 1.]

MAY 15, 1871.

Z. L. WHITE, sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?

Answer. In Washington.

Question. What is your business?

Answer. Newspaper correspondent.

Question. For what paper?

Answer. The New York Tribune.

Question. Look at the copy of the New York Tribune of May 11, 1871, on the table before you, and state whether that paper contains what purports to be a copy of a recent treaty concluded between the United States and the Government of Great Britain, at Washington, by the joint high commission representing the two Governments?

Answer. It does contain a copy of what purports to be the treaty.

Question. Was that treaty transmitted from Washington to that paper to be published?

Answer. It was.

Question. By whom?

Answer. By myself.

Question. When was it done?

Answer. It is dated May 10.

Question. And the publication is in the issue of May 11?

Answer. Yes, sir.

Question. It was transmitted, then, on the night of the 10th?

Answer. It was done on the day it bears date.

Question. The publication is in the morning paper of the 11th, and the matter was transmitted on the night of the 10th?

Answer. It was.

Question. How was it sent, by telegraph or mail?

Answer. It was sent by telegraph.

Question. Did you furnish the copy to the telegraph office to be transmitted, or cause it to be done?

Answer. I did.

Question. Was that copy furnished in print or in written manuscript?

The WITNESS. Am I obliged to answer that question?

The CHAIRMAN. Yes, sir; you are.

The WITNESS. Well, sir, I am not prepared to answer it.

Question. Do you mean to say that you refuse to answer it?

Answer. I am not prepared at present to answer it.

Question. Do you mean to say that you are unable to answer it, or that you will not answer it; which?

Answer. That I respectfully refuse to answer it at present.

Question. Why do you refuse to answer?

Answer. Because I consider that it is a matter with regard to my particular profession, that it might lead to other questions which would involve a matter of secrecy.

Question. And thereupon you refuse to answer the question?

Answer. Yes, sir.

Question. From what was that manuscript which was furnished to the telegraph office for transmission copied?

Answer. I have not testified that it was manuscript.

Question. How long had you had in your possession that copy before it was telegraphed?

Answer. I am not prepared to answer that question.

Question. Do you mean to say that you refuse to answer it?

Answer. I respectfully refuse.

Question. From whom did you obtain the copy or the document from which the copy was made which was left in the telegraph office for transmission to this paper?

Answer. I respectfully refuse to answer that.

Question. Did you obtain it from any member of the present Senate of the United States.

Answer. I did not.

Question. Did you obtain it in the room of any Senator of the United States?

Answer. I did not.

Question. Did you obtain it in any room occupied by any Senator of the United States?

Answer. I did not.

Question. Where did you obtain it?

Answer. I respectfully refuse to answer that question.

Question. Did you obtain it in any room in which, to your knowledge, a Senator had been immediately before?

Answer. I did not.

Question. Did you obtain it from any officer of the Senate?

Answer. I did not.

Question. And you refuse to answer from whom, and when, and where you did obtain it?

Answer. I do.

The CHAIRMAN (to the witness). I think I ought to say to you that there is no doubt about the propriety of these questions and no doubt about your obligation to answer. If you refuse to answer, I do not know that the committee have anything further to say to you at present.

Mr. TRUMBULL. I should like to ask Mr. White a question. (To the witness.) I wish to inquire of you whether the copy which you furnished came through the Senate?

Answer. I have no means of knowing.

Mr. TRUMBULL. Perhaps if we knew at what time in the evening you first had possession of it that fact might enable us to determine how it was. The Senate met at twelve o'clock noon, as you are aware, on the day the treaty was communicated by you, the 10th. My object in asking the question is to ascertain whether the copy that you had came through the Senate. You might not know yourself, but you could tell us at what time you first had possession of the copy which you communicated; how early?

The WITNESS. Well, I prefer not to answer that question. I may, perhaps, tell you something from which you can draw an inference. I never send dispatches to the New York Tribune later than one o'clock at night.

Question (by Mr. TRUMBULL). I wish to ask you distinctly whether you know that the copy you sent came through the Senate?

Answer. I do not know that it did.

Question. You do not know whether it did or did not?

Answer. I do not know whether it did or did not.

Question. Was the copy that you saw a printed copy? I do not ask about what you furnished; but was it a printed or manuscript copy that you saw?

Answer. I prefer not to answer that.

By the CHAIRMAN:

Question. You mean that you refuse to answer?

Answer. Yes, sir; I do.

By Mr. TRUMBULL:

Question. Do you decline to state at what time you first saw or first had possession of a copy of the treaty?

Answer. Well, sir, I will answer that question. It was not later than ten o'clock that night.

By the CHAIRMAN:

Question. Was it earlier than ten o'clock?

Answer. I think it was about ten o'clock.

Question. Of the evening of the 10th of May?

Answer. Yes, sir.

Mr. TRUMBULL (to the witness). Now, Mr. White, if you think proper to answer whether that was in print or not it might relieve you, perhaps, from some difficulty.

The WITNESS. It was in print.

Mr. TRUMBULL. In my opinion I may state the Senate has no jurisdiction or right to inquire anything about where you got the treaty unless it came through the Senate. If it came through the Senate we have a right to inquire into it, and I have asked you the question you have just answered with a view of determining that fact.

Mr. SUMNER. There is one other question the answer to which would probably fix Mr. White's position, though possibly his last answer does. As he has now testified that the copy which he saw was in print, the question I would ask is, was it printed on a folio or an octavo page?

The WITNESS. Perhaps I would not be able to state that. If you will describe to me the difference between a folio and an octavo page, perhaps I may be able to answer.

Mr. SUMNER. An octavo page is the ordinary page on which Senate reports are printed, and the folio page is of foolscap size. [Exhibiting to witness a Senate document.] This is our ordinary octavo page. Was the copy which you saw printed on pages of that kind?

The WITNESS. It was not such a page as that.

By Mr. TRUMBULL:

Question. Did you ever look over what is printed in the Tribune now before you to see if that is what you sent?

Answer. I could not identify it without a comparison.

Question. Have you ever compared it?

Answer. I have not.

Question. Did you send all of what purported to be the treaty?

Answer. I should judge that I did.

Question. You intended to send it all, and supposed you did?

Answer. Yes, sir.

Question. And did not withhold any portion of it?

Answer. I did not.

By the CHAIRMAN:

Question. Look at what is published in the paper and see if you have any doubt about that being what you transmitted.

Answer. I have no doubt of it.

By Mr. TRUMBULL:

Question. And that is the whole that you transmitted?

Answer. I have no doubt that it is the whole that I transmitted.

Question. And you intended to transmit the whole of what you had as purporting to be the treaty?

Answer. I intended to transmit the whole of what was the treaty itself.

By the CHAIRMAN:

Question. Did you pay anything, and if so, how much, for that copy which you obtained?

Answer. I respectfully refuse to answer that question.

Question. Where is the copy which you obtained?

Answer. I do not know.

Question. What did you do with it?

Answer. I respectfully refuse to answer that question.

Question. When did you last see it?

Answer. I respectfully refuse to answer that.

Question. Where did you last see it?

Answer. I respectfully refuse to answer that.

Question. Where is the Tribune office in this city, on what street?

Answer. Fourteenth street.

Question. Were you there at that office from ten o'clock till one o'clock of the night in question?

Answer. I was.

Question. Who else was there besides you?

Answer. I respectfully refuse to answer that.

Question. Was Mr. Flagg, one of the clerks of the Senate, in that room between ten and one o'clock that night?

Answer. I respectfully refuse to answer that. I believe I have testified that no officer of the Senate furnished the treaty to me.

Question. And therefore I suppose you could answer whether Mr. Flagg was in that room or not.

Answer. If he was there he did not furnish me the copy of the treaty.

Question. Was he there?

Answer. No, sir; he was not.

Question. Did you see him that night?

Answer. I did not.

Question. Do you know of his having had a copy of that treaty and having offered it for sale at any price whatever?

Answer. I do not know. I never was introduced to the gentleman until to-night, and did not know him until I came here to-night.

Question. And you say now that he was not in that office during that night?

Answer. I do.

Question. And that you did not see him that night, either before or after ten o'clock?

Answer. I did not.

Question. And you refuse to tell who was in the room that night?

Answer. I do.

Z. L. WHITE, recalled.

The CHAIRMAN (to the witness). The committee have considered the matter of your refusal to answer certain questions, and we are all of opinion that you are bound to answer; and we think it proper to state to you that if you do not answer, the committee will feel called upon to report you as in contempt. I say this for the purpose of letting you know exactly what may be the consequences of your conduct. And now, for the purpose of bringing the matter again distinctly to your mind, I put you this question:

Question. From whom did you obtain the printed copy of what purports to be the treaty spoken of by you, which you transmitted to the New York Tribune, and which you have stated you received and transmitted at or about ten o'clock p. m. of Wednesday, May 10, 1871?

Answer. I respectfully refuse to answer.

Question. Why do you refuse to answer the question?

Answer. On account of my professional honor.

Question. Not because you are unable to answer?

Answer. No, sir.

Question. What do you mean by your professional honor; what is your profession?

Answer. Whenever I receive any item of news, unless I have the permission of the gentleman or person who furnishes to me that item of news, I consider it as an honorable thing that I shall not divulge the source of that news.

By Mr. CONKLING:

Question. Is that true, even if you receive news that you know to be illicit, which you pay for in money?

Answer. I have not testified that I have received any news that I knew to be illicit, and I have not testified that I have paid for anything I knew to be illicit.

By the CHAIRMAN:

Question. The question is whether your professional honor, as you call it, would attach to illicit news for which you had paid money; would you, in such a case, feel bound not to answer a question which called for the source on the ground of professional honor?

Answer. That would depend on the understanding between the person from whom I received it and myself.

Question. Was there any understanding upon that subject in this instance?

Answer. I respectfully refuse to answer that question.

Question. Not because you can not answer it, but because your professional honor prevents; is that it?

Answer. Yes, sir.

By Mr. TRUMBULL:

Question. Do you understand fully, Mr. White, what may be the consequence of the course you are taking?

Answer. I do.

By the CHAIRMAN:

Question. Have the different reporters and correspondents of newspapers in Washington held a meeting on the subject of this investigation?

Answer. I do not know of any.

Question. Has there been any understanding or agreement between them that they would refuse to answer questions here?

Answer. I have made no arrangement with anyone.

Question. Have you heard of any such agreement made by any persons?

Answer. I have not heard of any.

Question. Has there not been a meeting at which a resolution was passed, in substance, that they would stand by each other in this matter?

Answer. I have not heard of any.

Question. So, then, this refusal to answer is your own independent and deliberate act and judgment?

Answer. It is.

Question. And you do not wish any opportunity to consult counsel or think of the matter any further?

Answer. I, of course, did not know what questions would be asked of me. If I could be allowed to withdraw my refusal and have time to think of the matter, I should not object.

Question. Did you come here with a fixed purpose not to answer questions which might be put to you that would draw from you the source from which you obtained the treaty?

Answer. I came here with a fixed purpose not to divulge the source from which I obtained the treaty.

By Mr. SUMNER:

Question. Do you understand that you are liable now to be brought before the Senate as in contempt?

Answer. I do.

Mr. SUMNER (to the witness). I merely call your attention to that so that you may answer with a proper sense of your responsibility.

By Mr. TRUMBULL:

Question. Did I understand you to say that you wanted time to consider and consult?

Answer. (After a pause.) I do not think it is necessary.

[Exhibit No. 2.]

H. J. RAMSDELL sworn and examined.

By the CHAIRMAN:

Question. Where do you reside?

Answer. In Washington.

Question. What is your business?

Answer. Newspaper correspondent.

Question. For what papers?

Answer. The Cincinnati Commercial and the New York Tribune.

Question. Look at the copy of the Tribune of May 11, 1871, on the table before you, and see if it contains what purports to be a copy of a recent treaty between the United States and Great Britain?

Answer. It does.

Question. Was that transmitted from Washington to the paper for publication?

Answer. Yes, sir.

Question. By whom?

Answer. By Mr. White, he being in charge of the office.

Question. Are you and Mr. White associates as correspondents of that paper?

Answer. Yes, sir; he is the chief of the bureau, and I am his assistant.

Question. Was the copy which was furnished to the telegraph for transmission in writing or in print?

Answer. It was manuscript.

Question. Written manuscript?

Answer. Yes, sir.

Question. From what was that written manuscript copied?

Answer. It was copied from print.

Question. Who had that printed copy from which this manuscript was copied?

Answer. I shall have to decline to answer that question.

Question. Do you mean that you refuse to answer?

Answer. I mean that, with due respect to the committee, I shall have to decline to answer it.

Question. Do you refuse to answer it?

Answer. I suppose that is substantially the same thing.

Question. What you mean is, not that you could not answer the question if you chose to do so, but that you will not answer it?

Answer. I decline to answer it.

Question. When and where did you first see that printed copy?

Answer. In the Tribune office in this city, on Fourteenth street.

Question. At what time in the evening of the 10th of May?

Answer. I took no note of the time.

Question. About what time?

Answer. Some time after nine o'clock, I should think.

Question. After nine o'clock on the evening of Wednesday, the 10th of May?

Answer. Yes, sir.

Question. In whose possession did you first see it?

Answer. I shall have to decline to answer that.

Question. Who was present in the office at that time?

Answer. I shall have to decline to answer that.

Question. How many persons were in that office, to your knowledge, that night, between ten and one o'clock?

Answer. I do not think it would be proper for me to answer that question.

Question. Do you mean that you refuse to answer it?

Answer. Yes, sir; I decline.

Question. You do not decline on the ground that you can not answer it, but you will not answer it; is that it?

Answer. I dislike to say that I will not, because it is not out of any disrespect to the committee, but I do not think I have a right to answer it.

Question. Why have you no right to answer it?

Answer. I think I am in duty bound as a man of honor not to answer it.

Question. Do you understand that the law shields and protects you from answering questions?

Answer. Yes, sir; I understand it protects me.

Question. Do you mean that the law does?

Answer. Yes, sir; in court. I do not know how it is before a committee.

Question. Have you taken any advice of lawyers on the subject?

Answer. I have not.

Question. I think you had better. Did you know from whom that printed copy was obtained?

Answer. I decline to answer that.

Question. Do you know what was paid for it?

Answer. I decline to answer that.

Question. Do you know how early in the evening it was obtained?

Answer. No, sir.

Question. Do you know where it is now?

Answer. No, sir.

Question. Where did you last see it?

Answer. I last saw it in the Tribune office.

Question. In whose possession?

Answer. I can not answer that.

Question. Do you mean that you refuse to answer it?

Answer. Yes, sir.

By Mr. SUMNER:

Question. How early in the evening did you know of it?

Answer. Some time after nine o'clock. I do not know the exact time, but it was after nine, I think.

By Mr. TRUMBULL:

Question. What kind of print was it? Was it a folio print, or was it the ordinary Senate print, octavo form?

Answer. I decline to answer that.

By the CHAIRMAN:

Question. As to all these questions which you decline to answer, I understand that you decline, not on the ground that you can not answer, but that you refuse to answer them. Do you so understand?

Answer. Yes, sir; I guess that is it.

Mr. TRUMBULL (to the witness). The object of my question was to ascertain whether this copy was obtained through the Senate. I wished to know whether you obtained any copy of this treaty from or through the Senate in any way.

The WITNESS. I had decided, in case I was called upon to swear to it, to answer that to my knowledge or belief it was not obtained in any manner from a member of the Senate or any officer of the Senate.

By Mr. TRUMBULL:

Question. So far as you know, it was not obtained from the Senate in any shape or form?

Answer. It was not.

Question. We have the means of knowing when the Senate print was printed, and that would determine, perhaps, whether it was possible that the copy sent by telegraph was taken from that, and I asked you the question as to the form of the print with a view to determine that matter. I understand you decline to answer whether the print which you saw was in the form that Senate documents usually are printed, on octavo sheets, or whether it was printed on different sheets. Do you decline to answer that question?

Answer. Yes, sir; I do.

Mr. TRUMBULL (to the witness). I will say to you what I said to a previous witness, that it may relieve you of trouble to answer all questions so far as the Senate is concerned. This is an investigation as to whether copies of the treaty may have been obtained from Senators or anybody else. If it turns out that the copy you obtained was not the Senate copy other questions might arise; but, so far as the Senate is concerned, I think you gentlemen will have to answer whatever proper questions are propounded to you. The inquiry which I have propounded is one in reference to the print. You have already stated that the copy you saw was in print. I have asked you whether it was in the usual form of Senate printed documents.

The CHAIRMAN (to the witness). And that question you refuse to answer?

The WITNESS. At present I should decline to answer it.

By Mr. SUMNER:

Question. You know very well the difference between an octavo page, such as Senate reports and documents are usually printed upon [exhibiting to the witness a Senate document], and a folio page of large foolscap size?

Answer. Yes, sir.

Mr. SUMNER. Senate documents are always printed, as you know, on an octavo page, like that which I have shown you, and documents from other quarters are not invariably printed in that way. It is understood that this document was printed under the direction of the State Department on a large foolscap page. Now, if your copy were on a large foolscap page, that fact would furnish very strong reason for believing that it could not have come from a Senator or any Senate official.

Mr. TRUMBULL. That is, from our copy of it.

Mr. SUMNER. Yes, from our copy of it.

The WITNESS. Since your suggestion that I had better see an attorney, I should like to consider that question. I do not want to put myself in a factious position.

The CHAIRMAN. I have no doubt that you put yourself in contempt of the Senate by refusing to answer these questions, and any lawyer will tell you so. You cannot set up any theory of honor on your part to resist the investigation of the Senate.

The WITNESS. I can set up, if you will excuse me, my own opinion of right and wrong.

The CHAIRMAN. Certainly, and take the consequences.

The WITNESS. Of course, if I do that, I expect to take the consequences.

H. J. RAMSDALL. Recalled.

The CHAIRMAN (to the witness). The committee have considered the matter of your refusal to answer certain questions which were put to you before, and the committee are unanimously of opinion that you are bound to answer the questions; and if you still persist in your refusal the committee will hold it to be its duty to report the fact to the Senate, that proceedings may be taken there to punish you for contempt. I make these remarks only for the purpose of explaining to you fully the circumstances under which we recall you, and put to you again the questions, so that you may understand exactly your position and the consequences that attach to it. Having made this explanation, I now ask you, as I did before, from whom the printed copy of what purports to be the treaty of which you have spoken was obtained?

The WITNESS. That I shall decline to answer.

Question. Do you still refuse to answer?

Answer. Yes, sir; I refuse, if you so esteem it. "Decline" is the word I used, however.

Question. By that you do not mean to say that you cannot answer the question, but that you will not answer it?

Answer. Yes; I decline to answer.

Question. Do you decline on the ground that you are unable to answer?

Answer. No, sir.

Question. Did you come here to this examination with the fixed purpose in your mind of not answering any question that should reveal the source from which that copy of the treaty was obtained?

Answer. Not knowing what questions were to be asked, I did not—

Question. That is not the inquiry. The inquiry is whether you came to this examination with a fixed purpose not to answer any question that should draw from you the source from which that copy of the treaty was obtained.

Answer. Yes, sir; I suppose I did.

Question. So that you deliberately now, of your own judgment, understanding the full circumstances of the case, persist in your refusal to answer the questions?

Answer. Yes, sir.

[Exhibit No. 3.]

UNITED STATES OF AMERICA,
CONGRESS OF THE UNITED STATES.

To John M. Morris, J. H. Flagg, H. J. Ramsdell, Z. L. White, Charles A. Tinker, Finley Anderson, George W. Adams, Donn Piatt, Hon. J. C. Bancroft Davis, greeting:

Pursuant to lawful authority, you are hereby commanded to appear before a select committee of the Senate of the United States on the 15th day of May, 1871, at seven o'clock p. m., at the committee room of the Committee on the Revision of the Laws, in the Senate wing of Capitol at Washington, then and there to testify what you may know relative to the subject-matters under consideration by said committee.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To John R. French, Sergeant-at-Arms of the Senate of the United States, to serve and return.

Given under my hand, by order of the committee, this 15th day of May, A. D. 1871.

MATT. H. CARPENTER,
Chairman of the Select Committee.

WASHINGTON, D. C., May 15, 1871.

Made service of the within subpoena by reading the same to each and all of the named witnesses this day, between the hours of 12 m. and 4 o'clock p. m.

JOHN R. FRENCH,
Sergeant-at-Arms United States Senate.

The first resolution was agreed to—yeas 42, nays 15; as follows—the yeas and nays being ordered on the call of Mr. Edmunds:

Yeas—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Cameron, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Cragin, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Harlan, Hill, Hitchcock, Howe, Kelly, Logan, Morrill of Maine, Morrill of Vermont, Osborn, Patterson, Pomeroy, Pratt, Ramsey, Sawyer, Spencer, Stevenson, Stewart, Stockton, Trumbull, Windom and Wright—42.

Nays—Messrs. Blair, Davis of West Virginia, Fenton, Morton, Rice, Robertson, Saulsbury, Schurz, Sherman, Sprague, Sumner, Thurman, Tipton, Vickers, and Wilson—15.

The second resolution was agreed to—yeas 38, nays 15; as follows—the yeas and nays being ordered on the call of Mr. Edmunds:

Yeas—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Cameron, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Cragin, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Harlan, Hitchcock, Howe, Kelley, Logan, Morrill of Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Spencer, Stevenson, Stewart, Stockton, Trumbull, and Wright—38.

Nays—Messrs. Blair, Davis of West Virginia, Fenton, Morton, Rice, Robertson, Saulsbury, Schurz, Sherman, Sprague, Sumner, Thurmun, Tipton, Vickers, and Wilson—15.

On the announcement of the latter vote the doors were opened, and the Senate adjourned as above stated.

MAY 17, 1871.

[Congressional Globe, p. 849.]

RECUSANT WITNESSES.

The Sergeant-at-Arms (Hon. J. R. French) appeared below the bar with the persons of Z. L. White and H. J. Ramsdell, and said:

Mr. President, in obedience to the order of the Senate, I have arrested

Z. L. White and H. J. Ramsdell, and now have them at the bar of the Senate.

The VICE-PRESIDENT. The Senate has heard the report of the Sergeant-at-Arms. What order shall be taken in the premises?

Mr. CARPENTER. Mr. President, I offer a resolution, which I ask to have read.

The resolution was read, as follows:

Resolved, That Z. L. White, now in the custody of the Sergeant-at-Arms on an attachment for contempt in refusing to answer certain questions propounded to him while he was being examined as a witness by a select committee of the Senate thereto duly authorized, be arraigned at the bar of the Senate, and that the President of the Senate propound to him the following interrogatory:

1. "What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May instant?"

2. "Are you now ready to appear before said committee and answer all proper questions that may be put to you by said committee?"

And that he be required to answer the same, and that the Secretary of the Senate reduce his answers to writing. And that said witness be first sworn by the Vice-President; that the Vice-President then propound to him the several interrogatories which were propounded to him by said committee, and which he refused to answer, as shown by the report of said committee; and that the said witness be required to answer the same, and that the Secretary of the Senate reduce his answers to writing.

Mr. CARPENTER. Mr. President, in view of the nature of this proceeding, and the fact that the doors are now open, and it is to be given to the country, I deem it due to the Senate and the committee to make a brief statement of the present attitude of this proceeding.

Mr. CARPENTER. Mr. President, it may be remarked in the first place that secrecy is one of the prerogatives of human nature, one of the essential conditions of success in all mundane affairs. Two individuals meet to negotiate a contract. Each thinks in secret within himself and communicates to the other only the results of his meditation, and so each deals with the other, concealing his thoughts, and expressing only his conclusions. When a negotiation is had between two corporate bodies, for instance, two railroad corporations, the directors of one company desiring to purchase another railroad, or obtain some satisfactory arrangement with another company, meet with closed doors, and after consideration and the discussion of various subjects, make their proposition to the other company, which in turn sits in secret, and makes its counter-proposition, each communicating to the other not motives but conclusions.

In no other way could the ordinary business transactions of life be carried on; and any corporation, in the case supposed, which should discover that the doorkeeper of its board of directors had revealed to the members of the other board what had taken place in such secret conference would not only regard him as a dishonored man, but would instantly dismiss him from its service, that being the only punishment it could inflict.

In case of negotiations between two great and powerful nations, as between the United States and Great Britain, touching the relations and involving the consequences of peace and war between forty million Americans on one side and the entire population of the British empire on the other, every sensible man must know and feel that each party must meditate in secret within itself, and communicate to the other only the results of such meditation. The negotiations tending to such an arrangement cannot be had in proper assemblies, nor be carried on through the press.

By the British constitution all diplomatic negotiations are carried on by the Crown, and, consequently, in secret. In this country this function is vested in the President and the Senate, and unless it is intended that in all negotiations between us and Great Britain our Government shall act at disadvantage, it is indispensable that secrecy should attend all consultations between the President and the Senate, and that nothing but the result of such conference should be communicated to Great Britain; because a publication to the people of this country of the proceedings and discussions of the Senate in executive session is equally a publication to the people and Government of Great Britain.

In framing the Constitution of the United States this fact was taken into account. In article 1, section 5, it is provided.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy.

Those parts of our Journal which, in our judgment, requires secrecy it is as much our constitutional duty to withhold from publication as it is our duty to publish the residue.

The Senate has adopted certain rules in pursuance of its constitutional powers and intended to answer this purpose. They are Rules 18, 39, 40, 41, and 50, which I ask the Secretary to read.

The Chief Clerk read as follows:

18. On a motion made and seconded to shut the doors of the Senate, on the discussion of any business which may, in the opinion of a Senator, require secrecy, the Presiding Officer shall direct the gallery to be cleared; and during the discussion of such motion the doors shall remain shut.

39. All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret, and all treaties which may be laid before the Senate, and all remarks and proceedings thereon, shall also be kept secret until the Senate shall, by their resolution, take off the injunction of secrecy; but this rule shall not apply to treaties with Indian tribes, which shall be considered and acted upon in open Senate, unless the same shall be transmitted by the President to the Senate in confidence.

40. All information or remarks concerning the character or qualifications of any person nominated by the President to office shall be kept a secret; but the fact that a nomination has been made shall not be regarded as a secret.

41. When acting on confidential or executive business the Senate shall be cleared of all persons except the Secretary of the Senate, the principal or Executive Clerk, the Sergeant-at-Arms and Doorkeeper, the assistant doorkeeper, and such other officers as the Presiding Officer shall think necessary; and all such officers shall be sworn to secrecy.

50. Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body, and if an officer, to dismissal from the service of the Senate and to punishment for contempt.

MR. CARPENTER. It is well known that subsequently to the assembling of the Senate in its present session the New York Tribune published a substantial copy of a treaty recently negotiated between this country and Great Britain. This publication was made in utter and flagrant disregard of the policy of this Government and the rules of the Senate upon that subject made in pursuance of the Constitution in that behalf. It thereupon became the duty of the Senate to investigate the manner in which such publication had been made.

The power of the Senate in regard to such investigation is undoubted in a twofold aspect. In the first place, the Senate may inquire how, when, in what manner, and under what circumstances, and by whom such publication was made, for the purpose of dealing with any offending Senator, if any has offended, or with any officer of the Senate who has been delinquent; and, apart from the purpose of punishment, the

Senate has the undoubted right, which is inherent in every legislative body, to investigate any matter or thing which may call for legislation, to investigate the conduct of the officers of any department of the Government, to determine whether any legislation be necessary to prevent similar misconduct in the future.

The power of the Senate being full and ample, we are informed by the report of the committee, from which the seal of secrecy has been removed, that on the 12th day of May, 1871, the Senate adopted the following resolution:

Resolved, That a select committee of five Senators be appointed by the Chair, who shall investigate how and by whom the treaty known as the treaty of Washington and other recent proceedings of the Senate in executive session were made public, and that said committee have power to send for persons and papers.

It will be seen, Mr. President, that the resolution is very broad, directing the committee not merely to investigate the conduct of Senators and officers of the Senate in this particular, but to inquire into a fact, namely, how and by whom the treaty was made public.

As I have said, the power of the Senate to institute this inquiry may be rested upon either of two grounds: first, as a foundation for disciplining its own offending members; or, second, with a view to the enactment of such laws as may be necessary to restrain the officers and clerks of the State Department from publishing any paper or other secret resting in that office.

My friend from New York [Mr. Conkling] also suggests that the Public Printer is elected by us. If through him or any employé of his, or through any mismanagement in that office, this confidence has been divulged, we ought to deal with them, or at all events we might be called upon to pass laws which would punish any such improper conduct in that department hereafter. And, as my friend also suggests, they ought to be exonerated if they have not been guilty.

This investigation is, therefore, not only within the clear power of the Senate, but is dictated by the propriety of the case, and the desire to vindicate those Senators who are innocent—and I hope they all are—and to punish those who are guilty of any irregularity, if such there are; and so of the officers of the Senate, and so of the Public Printer and his employés; and to lay a foundation, if it is necessary, to pass laws which may regulate such transactions hereafter in the State Department, or more extensively, if it shall be found necessary.

There are two acts of Congress material to this inquiry, and I will ask the Secretary to read, first, the act of Congress found in the eleventh volume of the Statutes at Large, page 155, an act in three sections.

The Chief Clerk read the same.

MR. CARPENTER. The second section of that act was amended by the act of January 24, 1862, which I will ask the Secretary to read.

The Chief Clerk read as follows:

AN ACT amending the provisions of the second section of the act of January 24, 1857, enforcing the attendance of witnesses before committees of either House of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the second section of the act entitled "An act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony," approved January 24, 1857, be amended, altered, and repealed, so as to read as follows: that the testimony of a witness examined and testifying before either House of Congress, or any committee of either House of Congress, shall not be used as evidence in any criminal proceedings against such witness in any court of justice: *Provided, however*, That no official paper or record, produced by such witness on such examination, shall be held or taken to be included within the privilege of said evi-

dence so to protect such witness from any criminal proceeding as aforesaid; and no witness shall hereafter be allowed to refuse to testify to any fact, or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact, or the production of such paper may tend to disgrace him or otherwise render him infamous: *Provided*, That nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Approved, January 24, 1862.

Mr. CARPENTER. These statutes being in force, and this committee proceeding under the resolution which I have read, Mr. Z. L. White, whose case is now under consideration, having been subpœnaed, appeared before the committee, and having been duly sworn by the chairman, was examined in relation to the matters included in this resolution. The particulars of his examination are sufficiently though briefly stated in the report of the committee, which I will ask the Secretary to read.

The Chief Clerk read as follows:

In pursuance of said resolution, the said committee met in the Capitol on the 15th day of May, A. D. 1871, at 7 o'clock p. m., and one Z. L. White, who had been duly subpœnaed as a witness to appear before said committee, then and there appeared and submitted to be examined as a witness, and was duly sworn by the chairman of said committee. He was shown a copy of the Tribune, a newspaper printed in the city of New York, of the date May 11, 1871. He stated that he was a correspondent of that paper, and that what purports to be a copy of the said treaty in said paper was transmitted by him to said paper for publication on the night of Wednesday, May 10, 1871; that the same was transmitted to said paper from the city of Washington by telegraph; that he obtained the copy which he so transmitted at about 10 o'clock in the evening of May 10, 1871. The witness was then asked, but refused to state, when, where, and from whom he obtained said copy, which he transmitted as aforesaid, resting his said refusal, not upon inability on his part to answer said question, but upon the ground that he was under honorary obligations not to answer the same.

The witness was then directed to retire, and after consultation, your committee, being unanimously of opinion that the questions which he had refused to answer were proper questions, and that the witness was under obligation to answer the same, the said witness was recalled, and having been informed by the chairman of the opinion of the committee, and admonished that it was his duty to answer, the chairman of the committee asked the said witness this question:

"From whom did you obtain the printed copy of what purports to be the treaty spoken of by you, which you transmitted to the New York Tribune, and which you have stated you received and transmitted at about 10 o'clock p. m. of Wednesday, May 10, 1871?"

This question the said witness refused to answer, and stated that he refused, not because he was unable to answer it, but on account of his professional honor, and stated that by his "professional honor" he meant that whenever he received any item of news, unless he had the permission of the gentleman or person who furnished it to him, he considered it an honorable thing that he should not divulge the source of such news, and gave no other reason for his refusal. Said witness, White, also testified that he came to said examination with a fixed purpose not to divulge the source from which he obtained the treaty.

Mr. CARPENTER. Mr. President, having shown the power of the Senate to institute this investigation, the pending resolution which commands the witness to answer the questions put to him by the committee, and which questions are conceded to be pertinent, must be adopted, unless the ground upon which the witness rests his refusal to answer be a valid one. By the common law a witness may refuse to answer any question in a judicial proceeding where his answer would criminate himself, and, according to some authorities, where his answer would disgrace him and render him infamous. But, in view of the importance of legislative investigations, and because the rights of an individual must yield when they conflict with the rights of the public, the act of Congress has provided that a witness called before a committee

of either House of Congress shall not interpose this privilege, but that he shall answer any question, though the answer may tend "to disgrace him or render him infamous;" the act providing, however, that such testimony shall not be used in any criminal prosecution against him. In other words, the act of Congress deprives a witness in such case of all privileges secured to him by the common law, and compels him to answer every pertinent question without regard to the effect of his answer upon his own reputation.

The pretense upon which the witness refused to answer the questions put to him by the committee is that, being a correspondent of a public newspaper, and having received a communication in confidence, he is not at liberty to disclose it. The consequence of this proposition is that the privilege of a newspaper correspondent overrides the Constitution of the United States and the acts of Congress passed in pursuance thereof, which by the Constitution itself are declared to be the supreme law of the land.

The Senate has but two courses to pursue. It must either go forward and compel obedience to its order by such proceedings as may be necessary to accomplish that purpose, or it must confess that it lacks the courage to enforce its own rules and compel obedience to the acts of Congress upon the subject.

It will be observed that by the act of Congress which has been read Mr. White's refusal to answer the questions put to him by the committee is a misdemeanor, punishable by a fine of from \$100 to \$1,000, and imprisonment from one to twelve months, in the discretion of the court. It is a well-settled principle of law that in cases of misdemeanor the distinction which exists in cases of treason and felony between principal and accessory does not obtain. Everyone who counsels another to commit a misdemeanor; everyone who employs another to commit a misdemeanor, or renders him aid and comfort in committing it; everyone who promises another in case he shall commit a misdemeanor to pay him double wages while suffering punishment for his offense, commits a misdemeanor himself, and is amenable to punishment as a principal. In view of this undoubted principle of the law it is refreshing to read an editorial in the New York Tribune of yesterday which is addressed *ex cathedra* from the sanctum of the editor to the Senate of the United States, to which every Senator is expected to give heed.

The Chief Clerk read as follows from the New York Tribune of May 16, 1871:

Information for the Senate.—The honorable Senators, whose solemn discussion as to whether the public should be permitted to know the details of the most important state document we have had in recent times was cut short by the Tribune's publication of the document in full, have been laboring over the problem of how the Tribune did it. They were yesterday promptly and cheerfully informed that no Senator or officer of the Senate had communicated it, and at that precise point their information stopped. They consulted and threatened, but got nothing more. We can impart to them a secret. They will get nothing more. They may attempt the absurdity of extorting answers concerning points involving neither any Senator nor any officer of the Senate, but they will be steadfastly met with point-blank refusal to answer. They can imprison our correspondents in Washington, in which case we shall simply double their salaries during the term of imprisonment, and fill their places with others at least as active.

The Senate may as well learn one thing, without further making itself ridiculous by impotent fault-finding about a publication which the whole country approves. It is not our business to keep the secrets of the Government, but to publish the news. If the Government can't keep its own secrets, we do not propose to undertake for it the contract. There does not live in Washington the officer, high or low, who can honestly say the Tribune ever received from him in confidence any document, or verbal or written statement of any sort, which it betrayed; and no man better

knows this fact than the head of the Department most affected by our publication of the treaty of Washington. But when news comes to us, and no public interest seems to us imperiled, we print it. If public officers or others can not keep their secrets from becoming news, we are very likely to be the first to print what every newspaper in the United States is clutching to get, and every Senator and Department officer as eager to buy. The Senate has it in its power still further to advertise this propensity of ours—that is all. And so, gentlemen, we wish you joy of your task!

Mr. CARPENTER. Mr. President, the people of the United States are sovereign, and to their will every department and officer of the Government must yield obedience. But the question remains, how is that will to be ascertained? From the Constitution of the United States and the laws passed in pursuance thereof, or from the editorials of the New York Tribune? If we consult the Constitution and laws we learn that the people desire that a treaty, while under consideration by this Government, shall remain secret. If we consult the Tribune we learn exactly the reverse. Now, sir, what is the rule and chart of our conduct? The Constitution and laws, or the New York Tribune? Are we sworn to support the Constitution or to obey the Tribune? Now, sir, I did not request the reading of this article for the purpose of making it the foundation of any attack upon the press, nor is this proceeding an attack upon the press.

The Senate, being of opinion that a wrong has been committed by the publication of this treaty, determines that an investigation ought to be had to ascertain the guilty parties, and it orders a committee to make that investigation. But the correspondents of the New York Tribune determine that it ought not to be made; and more, that it shall not be made. The Senate stands to-day face to face with Z. L. White upon this question. The Senate says there shall be an investigation. Mr. White, backed by his principals, says there shall not be. He says, "I know the fact you desire to learn, but I will not state it. True," he says, "the act of Congress compels me, but I will disregard the act and defy your authority." His principal pronounces the proceedings of the Senate to be ridiculous, and promises double wages to its correspondent while he shall suffer imprisonment for his disobedience to the law; and, snapping his fingers in the face of the Senate, he wishes it joy in its vain attempt to enforce the law against a correspondent of the New York Tribune.

It has been said that in England the press is the fourth estate of the realm. Sir, if this Senate, in the face of these facts, at the dictation of this paper, is to stop these proceedings, then in this country the press is the first and only estate of the Republic; your Constitution, your laws, the rules of your body are of no use longer, and never need be consulted. When a man is to fix his duty in any relation of life he does not look to the Constitution, nor the laws, nor the rules of this body; but he looks to the editorials of the New York Tribune, and what the Tribune says he follows; and if you attempt to enforce the laws the Tribune wishes you joy of the effort!

Now, Mr. President, I have very little more to say on this subject; but it seems to me, and I have no doubt it is the opinion of every Senator present, that no matter what unpleasant consequences may come of this transaction to this man White, whether he may have the pleasure of languishing in prison at double salary or not, and whether he shall stay there two weeks or forty years, if his life shall be lengthened to that extent, is of small consequence compared with the obligation laid upon us by our oaths to execute this duty imposed by the Constitution and the laws of the country.

If this resolution shall be passed, and he shall still be contumacious,

the Senate will undoubtedly order him to the common jail. The imprisonment will be an imprisonment with the key of the jail in his own pocket. He can be released by doing his duty before breakfast any pleasant morning, or he can stay there as long as he lives; and as every American citizen has a right to determine for himself what his conduct shall be, if Mr. White, with the key in his pocket, shall determine to remain forty years in the common jail and draw his promised double salary, there is no power on earth that ought to interfere.

Sir, there is especial occasion now, considering the distracted state of the country, considering the combinations that exist in some parts of this Republic to break down the laws, if not to overturn the Government, combinations in secret by vast numbers, who meet by candlelight and swear upon the Evangelist of Christ not to reveal the secrets of their confederates, nor to testify against their associates in crime, to stand by them, and adhere to them under all circumstances, and when, in view of this fact, we have committed the Army and Navy to the President, to be used for the purpose of dissolving these combinations, to find ourselves confronted here in the city of Washington by men, no matter how high they may be, no matter how learned they may be, no matter how necessary to the economy of our policy they may be, yet men combining together and telling you in advance that they come to your investigations with a determination to defy your authority and to defy the law!

Why, sir, disobedience to the law is a crime. It matters not whether the criminal be a Senator, a lawyer, a clergyman, a doctor, an editor, a Ku Klux, a gambler, a smuggler—no matter what he may be, no matter how high, no matter how debased, the offense is the violation of law. And a combination to defy the law and to obstruct the course of justice and to arrest an authorized constitutional legal investigation, is a high crime, a crime that strikes not at one life only, but strikes at the life of the State. And if you recognize the pretense of this witness, and quail now before Mr. White, who says you shall not investigate this matter, I wonder how much these innumerable Ku Klux that we have heard so much about and believed so much about and know so much about will be terrified by acts of Congress.

It is possible that under the present course of legislation these confederated and oath-bound criminals of the South might have a little more confidence that the President of the United States would do his duty, and, having the military arm of the Government, might strike a blow they would feel. But, sir, what encouragement do we give him in enforcing the law, and, as far as our example goes, what lesson do we teach to offenders? No, Mr. President, this is a Government of laws, not of men. The President of the United States and every man in authority under him, civil and military, every individual in the land, the most illustrious sage or statesman as well as the humblest and poorest individual, is bound by one rule, the law; and when we depart from that rule we strike a blow at the foundations of our Government, we strike a blow at human liberty secured by law. No, Mr. President, we must do our duty: pass this resolution and compel that man to obey. There is not only profit to all, but there is great dignity to him in obedience. He must obey. Having come face to face with the Constitution and laws of his country, they and he being opposed directly, he must yield, for they can not.

Mr. FENTON. Mr. President, I do not like this resolution very well, and am not certain that I shall support it. I will send to the Clerk's desk a substitute which I propose, and shall very cheerfully vote for, and which I am led to hope will meet the approval of a majority of

Senators. It certainly will answer sufficiently, in my judgment, all the purposes of this investigation so far as the Senate are concerned. I move to strike out all after the word "resolved" and insert:

That the President of the Senate be directed to propound to Z. L. White and H. J. Ramsdell, now at the bar of the Senate, the following interrogatory:

"Did you receive the copy of the treaty of Washington, which you have sworn you telegraphed to the New York Tribune, from any Senator of the United States, the clerk or secretary of any Senator, or any member of the family of any Senator, or from any officer or employé of the Senate or any member of the family thereof?"

And the said White and Ramsdell be directed to return and answer under oath in writing to this interrogatory.

The VICE-PRESIDENT. The question is on the amendment offered by the Senator from New York.

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Mr. THURMAN. Mr. President, this is a subject of delicacy, as every one must admit. There is danger that any course we may take may turn out to be the wrong one. There is certainly a strong feeling to vindicate the dignity of the Senate, or, as it is more correct to say, the rights and powers of the Senate; and that is a consideration which no one ought to lose sight of. There is also danger of our taking a severe course, influenced by our feelings; a course contrary to the true idea upon which this proceeding should rest.

Now, sir, the Senate will make a very great mistake if it supposes that the question now before it is a question about the publication of the treaty alone; that it is a question whether we shall punish somebody for publishing the treaty. That is not the question before the Senate at all. I agree with the Senator from Massachusetts [Mr. WILSON] that, so far as I know, there is no law which would enable us to punish any one for publishing a copy of this treaty, obtained from the Department of State before it was communicated to the Senate. Whether we could punish a person for publishing a treaty that had been communicated to the Senate and which the Senate had resolved to consider in secret session is another question about which it is not necessary to express any opinion.

But the present proceeding is not a proceeding to punish the editors of the New York Tribune or the correspondents of the New York Tribune for publishing that treaty. The persons at the bar did not publish the treaty. The most that can be said of them is that they transmitted it to the editor of the New York Tribune. They did nothing more in that than did the operators in the offices of the telegraph company. The latter did more even than these persons, or, at any rate, quite as much. The person who is responsible for the publication is the managing editor of that newspaper; and if you are to go to work to punish any one for giving the treaty to the public, he is the man you should attend to. And now when I am speaking of "the treaty" I am assuming that the paper called the treaty is it. I do not say that it is the treaty at all, but I speak of the paper which purports to be the treaty; and I say that if you are to punish any one for publishing that, you must go to the man who did make the publication, and that was the managing editor of that paper.

But the question that is before us is, whether these gentlemen who are now at the bar of the Senate shall be punished for contempt. That is the question, and it is the whole question so far as the immediate issue before the Senate is presented, whether they shall be punished for contempt. Well, sir, the first point is, are they in contempt? About that there can be no two opinions. A question has been put to them

by a committee properly constituted, a proper question, and they have refused to answer; and that that is a contempt every lawyer knows, every man of common sense knows. I think they ought to have answered the question. I can not agree that they could shield themselves from answering that question under the privilege they set up. They could not do it in a court of justice at common law, for their refusal to answer does not come within any privilege known to witnesses. They certainly can not do it before a committee of the Senate when we have a statute, which was read here this morning, which in express terms declares that they shall have no privilege of any kind whatsoever that shall prevent them from answering questions.

These being my views, it might be supposed that I would feel bound to vote for this resolution that has been offered by the Senator from Wisconsin; but I am compelled to say that, upon principle, I do not feel that I am so bound. Whatever may have been the law of the courts in regard to punishing for contempts, or whatever may be the law of the Senate in regard to the power to punish for contempts, I am perfectly well satisfied in my own mind that since the enactment of the statute that makes it an indictable offense for a witness to refuse to answer proper questions when put to him by the Senate or one of its committees, we can no longer exercise the common-law power of punishing for a contempt.

This proceeding, therefore, to put these persons in prison must not be regarded as punishment. If it is to be regarded as punishment, then, upon any fair and honest interpretation of the Constitution of the United States, the punishment that we inflict would bar an indictment in the district court, for the Constitution in plain terms says that no person shall be twice put in jeopardy for the same offense. And although it may be said that here a man is not put in jeopardy twice for the same offense, that we punish him for the contempt of the Senate and the court punishes him under the statute for refusing to answer the question that is put to him, that is mere sophistry; the offense is precisely the same thing. What constitutes the contempt of the Senate? The refusal to answer the question. What constitutes the indictable offense? The refusal to answer the question. It is mere sophistry to say that these are two distinct offenses, that the Senate can punish for the contempt and that the court can punish, too.

Mr. HOWE. I ask the Senator whether it is not rather early, according to his notions of practice, to interpose the plea of *autrefois convict*?

Mr. THURMAN. Not in view of the reasons I am going to give for my vote. If this statute were not on the statute-book, and if we were proceeding to punish for a contempt, that would be one thing, and then we might feel bound to vote for this resolution to punish for the contempt or for some resolution that is to follow it inflicting punishment for the contempt; but inasmuch as the Congress of the United States has enacted a statute making this very refusal of these parties an indictable offense, the question is whether we are not bound by any proper mode of proceeding to remit these parties to the court to which we have given jurisdiction over the offense, and not undertake to punish them ourselves.

Mr. CARPENTER. The statute referred to by the Senator from Ohio in words provides that that trial and punishment provided for in that first section shall be "in addition to the pains and penalties now existing." It is, therefore, apparent on the face of the statute that it was not the intention of that statute to take away from this body the power to do anything it could have done in such a case as this if that statute

had not been passed. Now, if I were to concede (which I do not) that our proceeding here was in the nature of punishment and would bar punishment under an indictment and trial before a jury, that would be no answer, because the statute on its face shows that Congress did not intend to take away our power, that they intended that the power conferred upon the courts should be in addition to ours; and if that is unconstitutional, that simply falls to the ground.

Mr. THURMAN. Mr. President, it will not do to interpret these words in the statute to which the Senator from Wisconsin has referred in the way he interprets them; that is to say, to interpret them in this way, that it is intended by that statute that the Senate may punish for a contempt and that in addition to that the courts may also punish upon an indictment. That would present a novel spectacle indeed of a state of the law in which a man could be indicted in one court and have punishment meted out to him, and it be also provided that another tribunal might add to that punishment without an indictment before it. That will not do. The meaning of those words I take to be this: That the act shall not prohibit us from proceeding against a party; as we are proceeding against these parties, to compel them to answer the question. That is what it says, and that it is which distinguishes this case from punishment. I admit that you have a right to bring these gentlemen to the bar of the Senate; I admit that you have a right to confine them, and you have a right to confine them as long as this session lasts, unless they sooner answer the question; but the reason why you can do it is not that the confinement is a punishment for the offense they have committed, but because it is a means of making them answer the proper question that has been put to them, and that is the whole of it. Although in the olden times courts used to punish witnesses for a contempt in not answering a question, and even keep them in prison long after the case was disposed of, the general tenor of our modern decisions is that the witness can only be confined until the case has been disposed of; that the confinement is simply a means to compel him to give his testimony. While, therefore, I admit in the broadest sense your legal power to put these gentlemen in prison and keep them in prison as long as this session shall last, unless they shall before that answer the question, I do deny that this is a proceeding in its nature punitive for any offense they have committed, but I say that the whole object of it is, the whole foundation for it is, that it is a means of compelling them to answer a proper question which your committee has addressed to them.

That being the case, this imprisonment being simply a means to procure the answer which you desire to have, then comes the practical question, whether or not it is likely to be successful. I am not going to say, certainly in the presence of these gentlemen and of the world, that they will remain contumacious. I hope they will not. I hope they will discharge their duty and answer the question. I think they ought to answer the question, and although I can have some respect for the *esprit de corps*, or principle of honor, as they call it, which makes them refuse to answer, yet they are entirely wrong in that, and they ought to answer, and I hope they will; but suppose they do not, what then? You want to vindicate the dignity of the Senate. Suppose they do not answer, and ten days hence, when the Senate adjourns, you turn them out; how then, have you vindicated the dignity of the Senate? How have you come out in this battle with the press? You are simply beaten then, and will be laughed at then more than you will be laughed

at now if you open the doors to these gentlemen and tell them, "Go; depart in peace!"

I see no good, therefore, in this proceeding. So far as moral guilt is concerned, we have nothing to do with that; but this I must say in their defense: while I do not admit the doctrine of the Senator from Massachusetts [Mr. Wilson] that there is nothing morally wrong in a citizen publishing to the world a treaty that is under consideration in the secret session of the Senate, while I think there is a moral obligation that rests upon every citizen to do that which under the Constitution and the laws of the country the interest of the country is supposed to require, while I do think that as long as the Constitution and the laws of the country require that we should consider a treaty in secret session a good citizen ought not to make it public without our leave, I say at the same time that if there ever was a case in which men had a palliation, almost a justification, for publishing a treaty, it is this very case. Why, sir, what have we seen? We have seen the Secretary of State (for no one has denied that it is his act) publishing beforehand semi-officially a synopsis of this treaty; and who has complained of that? Who has sought to bring the Secretary of State to the bar of the Senate for publishing a synopsis of this treaty in the official paper in this city and all over the country? And, after that has been done by the Government itself, who is there that can say that any newspaper editor whatsoever or any newspaper correspondent whatsoever has incurred any moral turpitude by making the whole text of the treaty public, if that has been done? No, sir; it would not do at all. There has been no attempt to keep this treaty secret. As I have said, the Secretary of State has made a semiofficial publication of it. We have had it announced here to-day in the Senate that the President of the United States was in favor of publishing the whole text of the treaty, that the Secretary of State was in favor of that publication, and now when that was the temper in which the matter was to be considered, it will not do to say that here has been a heinous offense or any moral guilt in the publication that has been made, if indeed the thing that has been published be the treaty.

But, as I said before, it is not the publication which is before us. The question is simply, what shall we do under these circumstances? Shall we confine these men in the hope that we shall get from them answers to the questions that have been put to them? If we have no such hope, then their confinement is simple barbarity. Then we are bound, upon every principle of justice, to turn them over to the courts to punish them for the offense they have committed, to give them a fair trial there before a court and a jury of their countrymen upon an indictment for the offense they have committed, and not to undertake to punish them simply because we have the power to do it.

Mr. CARPENTER. If the Senate, under the circumstances of this case (conceded by my friend from Ohio to be a perfectly clear case of contempt of the Senate, in the disobedience of a witness to answer a proper question, there being no excuse whatever for that disobedience upon the naked case presented, by my friend's own admission) should refuse to proceed, I ask if in any future investigation which the Senate should order upon any matter whatever a witness should refuse to answer the first question, could any Senator have the face to send him to jail or to do anything else with him? In other words, do we not, by refusing to adopt this resolution in this bald case, as admitted by the Senator himself, abdicate all power to investigate anything?

Mr. THURMAN. No, Mr. President, we do not at all. If the Senate is determined to keep these gentlemen here indefinitely in imprisonment, then let the Senate extend the power of this committee beyond the session and keep them here during the whole summer, if that would be lawful. In some conversation I have had with a gentleman more experienced than I am in parliamentary law he expressed some doubt whether they could be kept in imprisonment under an extension of the power of the committee to sit during the vacation; but I do not moot that question. Assuming that, is the Senate prepared to do that; has the Senate any idea whatever of doing that? I put it to the conscience and honor of Senators, have they any idea of extending the powers of this committee to sit during the vacation and keep these men in prison until next December? I do not believe a majority of the Senate have any such idea at all. I believe that the whole thing will turn out simply thus: If these men are imprisoned, the prison doors will be opened when this session ends, if they should still remain contumacious; and then I do say that neither the dignity of the Senate, nor the Constitution of the country, nor the laws of the land will have been vindicated in the slightest degree; but, on the contrary, the whole thing will have been almost a ridiculous farce.

That is the way the thing seems to me. I may be wholly mistaken about this matter, but that is the way it seems to me; and therefore, seeing no good that is to come of this, while I want the man who gave this treaty to the press to be found out, while I would be glad that he should be found out, but seeing no prospect of finding him out by that course which you propose, I shall vote for the substitute of the Senator from New York, although that, I must confess, is not logically correct. Why it is not logically correct, every lawyer knows, for it is simply leaving it to the witness instead of the Senate to determine what is the evidence that we ought to have.

Mr. CARPENTER. On the Senator's own ground, if we are playing a farce, is not that a worse farce than we should commit if we were to let them out of jail at the end of the session?

Mr. THURMAN. No; and I will tell the reason for that: Because, if the committee had put the questions which are contained in the substitute of the Senator from New York, if they had put their inquiry in that way, as comprehensive, reaching not only every Senator but every secretary or clerk of a Senator, and every member of his family, reaching every officer of the Senate and every subordinate or employé of the Senate and their families, too; if the committee had made as broad investigation as that, then my friend might say to me that that substitute was a farce. It is not a farce now; it asks for information that the committee has not obtained.

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Mr. CARPENTER. Mr. President, the question by this substitute—I do not propose to take any time—is now fairly presented to the Senate, whether we are to go on with this matter or back out. It is perfectly apparent, and must be to every Senator, that the investigation had amounts to nothing except this: Read by the country, I think it will produce the impression that, it certainly would upon my mind, that we had gone so far that we dared not go further without implicating some in our own body. We put to this witness this question: “Where did you obtain the treaty?” He answered that he did not obtain it from a Senator or did not obtain it in a room where a Senator was or to his knowledge had been. The question then is, “From whom did you obtain it,” and that he refused to answer. The report shows

that this witness had been instructed that the Senate had no jurisdiction whatever to punish anybody except Senators and officers of this body, and, being thus informed, he refused to answer from whom he did obtain the copy. What is the fair inference? That the witness knew that if he told from whom he did obtain it it could through that person be traced back to a Senator or to some officer of this body; and the inference of all candid men will be that we went on until we became satisfied of that, and then backed out of the investigation.

Mr. President, many of us have had the misfortune to try cases in justices' courts and in county courts and other courts of record. We have defended criminals and we have prosecuted criminals. We are told here by my eloquent friend from Nebraska—if I could imitate his elocution and oratory I would go off with him on the subject of his eloquence as magnificently in his praise as he was of me, but I know I should fail—we are told by him that the liberty of a citizen is involved. Mr. President, you never arrested a thief for larceny without involving the liberty of a citizen. You never arrested a witness who refused to obey your subpoena and come into court and testify without involving his liberty. You never arrested a murderer nor any other criminal without touching this doctrine of the liberty of the citizen, which means simply the privilege of one man against the privilege of all men. Is that to override and end this inquiry? Then we ought to-morrow to abolish every penal statute on our books. You have no right to try a man for murder; certainly he is a citizen; and has not a citizen vested rights? Is not liberty higher than the administration of justice? Will you sit here and enact laws, sit here and enforce them, which drag a citizen from his home into the notoriety of a trial and then into conspicuous exhibition on a gallows for nothing except murder?

Alluding once more to criminal trials, how often has every lawyer found out this in his experience: You call a witness on the stand; he, being unwilling, thinks he can block up the whole investigation with two or three answers that he volunteers. He does not know anything about it; he was not there; he was in some other place. Very well. You always listen until he gets through with his bluffing, and then you go quietly to work to take away his underpinning by inquiring about other little facts that would square with his theory, if it be true, and conflict with it if it be false; and in that way how often have you seen an unwilling witness completely undermined and finally compelled to swear exactly the reverse of what he started out to swear.

To this question, "Did you obtain this treaty from a Senator?"—and this substitute says you have no right to inquiry beyond that—he says, "No." "Where did you get it from?" "I will not tell." Suppose he did tell, and should answer, "From John Smith," and that John Smith was employed by the day to copy papers and do other work in the office of Mat. Carpenter, Senator from Wisconsin, I am rather inclined to think that the committee would have sent for John Smith and would have inquired from John Smith how he obtained the copy, or whether he procured it from his employer, and thus get at the facts and circumstances of the case. I am not going to take up any time to demonstrate that. Does any man suppose that this American people are not intelligent enough to see that, on the face of these papers, if we stop here, we stop self-convicted?

Mr. HILL. Mr. President, I certainly approach this matter without any feeling. I desire to vote understandingly and to vote justly. I am not quite satisfied with the substitute of the Senator from New

York, though I might be if it were a little amended. I propose to amend it by adding a few additional words, which I send to the desk to be read.

The VICE-PRESIDENT. An amendment to the amendment is in order. The Secretary will report the amendment proposed by the Senator from Georgia to the amendment of the Senator from New York.

The Chief Clerk. It is proposed to insert among the interrogatories required to be propounded by the amendment of the Senator from New York the following:

From your knowledge of the facts attending the procurement of the alleged copy of the treaty by you, are you well satisfied that the same was not obtained from or through any Senator or officer or employé of the Senate?

Mr. HILL. I submit, that because I think if these gentlemen answer that question affirmatively the Senate ought to stop at that point, and not go further. It is a matter wholly immaterial to me where they procured a copy of the treaty, if it be in truth a copy—and I am admonished here to-day that we must be very careful in speaking of any such matter—provided it was not obtained from or through the Senate or any officer or employé of the Senate.

Mr. CARPENTER. Would it not be better to change the amendment so as to refer the whole subject to these two witnesses and let them report to us their opinion upon it? [Laughter.]

Mr. HILL. No, I do not think it would; at least not quite so well; but I had thought of that idea in that connection. [Laughter.] I preferred, however, to confer with some legal minds as to the effect of this.

Certainly, if it be true that these two reporters of the press procured directly from the State Department, or from a clerk in the State Department, the copy of the treaty which has been used, they do know that its procurement was not connected with the Senate. From the examination which has been made, I am impressed with the idea—if I may be permitted to say this much about the treaty—I am satisfied, from the comparison which has been instituted between the copy of what purports to be the treaty that is contained in the New York Tribune, that what has appeared in that paper was not printed after the copy which is here in the Senate. It is not a copy literally of that paper which has been furnished to Senators. That brings my mind to the conclusion that there is a strong probability that the copy printed in the Tribune was not taken from it.

I do not think we are constituting these persons the judges as to whether it came from a Senator or not by the form of question which I propose to submit. I do not know that it is agreeable to every Senator or officer or employé of the body that this form of inquiry should be addressed to the witnesses, but it is enough for me, knowing the witnesses to be men of character, if they answer the question affirmatively, that the Senate should have nothing further to do with the matter.

I know that the objection which the Senator from Wisconsin has made does seem to apply, that it does appear somewhat like referring the question to these witnesses that they may exculpate everybody by simply saying so. That argument, however, proceeds on the supposition that they may say what is not true. So far as they have testified, I must do them the justice to declare that they have testified with great caution, great prudence, and, I have no doubt, with great truthfulness; and they would have preferred, no doubt, to go on and testify further and answer every question. I am satisfied that when they

answer the question which I have submitted as an amendment, comprehensive as it is, we should go no further, because I believe they know where the copy came from and who it was that furnished it, and if they answer that it did not come to them by or through any Senator or officer of the Senate, I think that we may well stop there.

Mr. CORBETT. Mr. President, I shall support the substitute offered by the Senator from New York, and for the reason that we in the majority of this Senate, who are responsible for the action and organization of the Senate, have, in the most lax manner, allowed our secret proceedings to be published from time to time, and have made no examination into the subject. We have met in the most confidential manner, and yet the majority of this Senate have allowed our proceedings when so assembled to be published, without inquiry, without examination. The proceedings of such meetings could only have been communicated by Senators themselves.

If Senators of our own party will allow the proceedings of our own secret meetings or caucuses to be published in this way, and will make no examination into how it was done, and make no attempt to prevent it; if they will not commence there at the root of this evil, I am in favor of stopping this present proceeding in the Senate. If we will not commence an inquiry into this evil in a place where we can stop it, if we will allow Senators themselves to communicate our own votes and proceedings in secret caucus, how can we undertake to stop communications in the Senate where there are more than our own party present, and where the officers of the Senate are also assembled.

It seems to me that we ourselves, as a party organization, are responsible for these things in a great measure. Every Senator here knows that we have seldom met together in caucus without the proceedings of that caucus and the votes of that caucus being published the next day in every newspaper in this city, and perhaps in every newspaper in all the large cities of the country. If we allow this, how are we to put a stop to the publication of these communications? In this case it must be remembered that the Secretary of State may be said to have encouraged the publication of this treaty by giving to the public a synopsis, indeed, the bulk of the treaty, before it was transmitted to the Senate. Knowing the desire of the State Department and of the Government to have this treaty published, in order that the feeling of the community with regard to it might be ascertained, these members of the press obtained a copy of it, no doubt under the belief that it would be satisfactory to the Government that it should go before the people. If that was not intended, why should a synopsis of the treaty have been furnished?

For these reasons, until we take some steps to put a stop to the publication of the proceedings of our own secret meetings, I am opposed to investigating such publications as this, and hence I shall support the substitute.

The VICE-PRESIDENT. The first question is on the amendment offered by the Senator from Georgia [Mr. Hill] to the amendment of the Senator from New York [Mr. Fenton], which will be read.

The Chief Clerk. The amendment to the amendment is to insert as an additional question:

From your knowledge of the facts attending the procurement of the alleged copy of the treaty by you, are you well satisfied that the same was not obtained from or through any Senator or officer or employé of the Senate.

Mr. MORRILL, of Vermont. Mr. President, it seems to me that the only point we have to consider at the present moment is whether the

questions propounded by the committee were proper ones or not. If they were proper, then all that the committee now propose is that they shall be restated, and that these witnesses shall be required to answer them.

While I am myself quite in favor of having all treaties made public and having no secret session about them, it seems to me that we are involved in the predicament of pronouncing these questions that have been proposed as unauthorized, or we must follow the proposition made by the Senator from Wisconsin. I shall therefore vote against all amendments to that resolution. It does not raise the question of the punishment of these young gentlemen who appear to have transgressed the law in relation to this matter. That question is for a subsequent proceeding, for a subsequent occasion. To be sure, they may involve themselves by their course in relation to the statutes that in this case may have been made and provided; but I am anxious for one thing, and that is that we may in some measure correct the Senate. If our proceedings in secret session are to be kept, let us contrive some measures by which Senators themselves may be a little less leaky. Why, sir, some correspondents, I believe, have sometimes refused to give information to Senators because they are so leaky. [Laughter.] I have no doubt myself but what this information could be obtained as to where this treaty was found by other parties than by these gentlemen who are now before the Senate, and if the committee shall go forward with their examination, I have no question but what the facts will be found, and that those probably will implicate some Senator in at least carelessness on this subject. But, Mr. President, if the question is as first stated, merely as to whether the committee that we have authorized has asked proper questions, it seems to me we cannot do anything less than follow their lead.

The VICE-PRESIDENT. The question is on the amendment offered by the Senator from Georgia to the amendment of the Senator from New York.

Mr. HARLAN. I am of the impression that this committee itself would have had a right to withdraw the question and propound another to these witnesses or either of them. In that case I apprehend they would not have been in contempt of the authority of the Senate.

Now, if the Senate chooses to withdraw that question and propound a different question, it seems to me that the committee ought not to take exception to it. There are some members of this body evidently who are anxious to ascertain whether any of the secrets of the Senate have been divulged by a member of the body or by any of its officers, and are not disposed to proceed any further with this investigation. It seems to me that if a majority of the Senate are of that mind, they have a perfect right to change this question and propound a question that will enable these witnesses to answer all that a majority of the Senate may desire to have answered on this subject.

Mr. EDMUNDS. But how can you know they are telling the truth if you change the question?

Mr. HARLAN. It is a mere choice of questions. I do not understand that if this question should be answered, and answered satisfactorily, it will exhaust the power of the Senate. Other questions may be propounded, either by the Senate itself directly or by the committee as the organ of the Senate. It is hardly worth while, as it seems to me, to proceed on the assumption that these witnesses are necessarily and inflexibly contumacious. They may be under what they regard as

honorable obligations to other parties that they would prefer not to violate.

Mr. CARPENTER. Will my friend allow me to interrupt him a moment? The report of the committee shows that this witness, White, testified that he came to that examination with a fixed determination not to answer any question that would disclose the source from which that treaty was obtained.

Mr. HARLAN. Even though he may have said so, he may think better of it. The exact offense here is failing to answer a question in the precise form in which it is presented to the Senate. The witness thus refusing is technically in contempt of the Senate, having thus refused to answer a question thus propounded by an organ of the Senate, one of its committees; but if the committee itself had chosen to withdraw that question and propound another, the witness would not in that case have been in contempt.

Mr. CARPENTER. If my friend will allow me once more, the committee in good faith, desiring to ascertain what this fact was, could not withdraw their question.

Mr. HARLAN. That may be; but if the Senate itself should differ with the committee on that point the committee ought not to take offense.

Mr. CARPENTER. Not at all. If the Senate do not desire to find that fact out, the committee do not care anything about it.

Mr. HARLAN. Or if the Senate chooses to proceed with another line of interrogatories to find that out, the committee ought not to be offended.

Mr. HAMLIN. What are the questions?

Mr. HARLAN. I suppose this one question does not exhaust the capacity of the Senate in proceeding with the investigation. To get at precisely the point I desired to elucidate I will state that I once served on a similar committee, and a witness refused to answer a question relating to a fact which he said had been communicated to him at a dinner table. He thought that the honorable obligations which rested on every gentleman would prevent him from divulging what was communicated to him at a dinner table at a private party. Well, whether that was a sufficient excuse or not was not very material, and the committee chose to withdraw that question, and the refusal of the witness was never communicated to the Senate. The committee having withdrawn the question, I suppose the witness was not in contempt.

Now, if the Senate itself chooses to vary this interrogatory and put it in another form so as to ascertain, if it can, whether this secret which is supposed to have been divulged involves the honor of any Senator or any officer of the Senate in any way, it has a right to do so without the members of this committee finding fault with the Senate for so doing. That is as far as I care to proceed in the investigation. A majority of the Senate may wish to proceed further; they may wish to pursue the investigation in order to ascertain, if they can, whether any officer of the State Department has been derelict in duty, or any employé of the President of the United States. I suppose, for thereasons which have been presented by the chairman of the committee, that it is competent for the Senate to proceed thus far if the Senate chooses; but if a majority of the Senate should be satisfied with exonerating the members of its own body and its officers, it certainly has a right to do so without reflecting on the honor or integrity or capacity

of this committee. I am not right sure that the amendment now pending does cover everything that ought to be answered; but if it should not do so, the answer to that question, as it seems to me, will not exhaust the power of the Senate or of the committee. Taking that view of the subject, I shall vote for the amendment.

Mr. DAVIS, of Kentucky. Mr. President, I will say a word on this subject. I am opposed to the amendment offered by the Senator from New York because I believe it is tantamount to a waiver of a bona fide and a fair investigation of the question. I am in favor of the question propounded by the committee because I believe that is in the way, and, the only effective way in examining correctly and ascertaining whether this treaty was improperly disclosed by any Senator or by any officer of the Senate, or by the procurement of such Senator or officer.

Mr. President, suppose a man is found in possession of a counterfeit bill of the United States, a greenback of a thousand dollars. Its being found in his possession gives rise to a *prima facie* case against him that he is feloniously in the possession of that spurious paper. Is he to exempt himself from that *prima facie* case of his own guilt by simply saying that he is innocently in possession of it by having obtained it from another? Suppose the matter is commenced to be investigated; the person who is found in possession of it gives the name of another person from whom he obtained it and fixes that fact upon him. The presumptive guilt then is transferred from the person who is found in possession of it and is put upon the person who delivered it to him. The person who delivered it to him in whose possession it is found may have received it, innocently, in the same way, and how is he to exonerate himself? Simply by the same process, by showing that he received it innocently from some other person. In that way the innocence of all the intermediaries may be established, and the ultimate guilt may be fixed upon the proper person.

That is the process of investigation which the committee has adopted in this case. It is the sensible, the indispensable process of ascertaining guilt and innocence, such as is adopted in all investigations of the kind. The committee are examining a person in whose possession a surreptitious copy of this treaty, or what purports to be a copy of it, is found. They want to ascertain whether the person to whose possession this copy has been traced is properly or improperly in possession of it. What is the process that they adopt? They call him up before them, proceed to administer an oath to him, and ask him the single, simple question, "From whom did you obtain this paper?" If he obtained it properly and innocently, all he has to do is to disclose from whom he did obtain it, and his refusal to answer that question is presumptive evidence that he is guiltily in possession of it.

Now, Mr. President, the question proposed to be substituted would not give the committee of the Senate nor the Senate itself the efficient and usual means of tracing guilt that the question propounded by the committee to the witness and his absolute obligation to answer that question would afford. Every man knows that.

Mr. HILL. I will ask my friend from Kentucky, with his permission, if the question which I propose to add to the amendment of the Senator from New York be answered negatively by the witnesses—and I undertake to say from what they have done they are likely to answer truthfully—if they say they can not swear that this alleged copy did not emanate from the Senate or from some of its officers or employés, then are we not forced to the conclusion that it did so emanate?

Mr. CONKLING. Will the Senator from Kentucky bear a moment? I only want to remind him that the report shows that already that question has been put and answered.

Mr. DAVIS, of Kentucky. Yes, sir; but the question suggested by the honorable Senator from Georgia and by the honorable Senator from New York as a substitute for the questions propounded by the Senator from Wisconsin would amount to nothing, literally nothing. Why? No man can tell how many intermediaries there may be, how many persons intervening between the press that published this paper and the person from whom it improperly passed originally; there may be a dozen. The only effect and consequence, practically, of answering these questions would be to show that there was some other intermediary who was not necessarily connected with an improper disclosure or putting into utterance of the paper.

Now, what is the purpose of the Senate, and what is the good sense of this proceeding? A treaty has been submitted to the Senate by the President. It is one of the rules of the Senate that the proceedings upon this treaty shall be in secret session, and that a copy of the treaty shall not be given out by any Senator or by any officer of the Senate, or by the procurement, directly or indirectly, of any Senator or officer of the Senate. What is the Senate engaged in? It is to investigate the fact whether this treaty has passed from the Senate by such improper means, that is, by the violation of faith on the part of any Senator or any officer of the Senate, or by the procurement of such Senator or officer.

Do we wish to preserve and vindicate the secrecy of the proceedings of the Senate upon treaties? How can that be done effectually, unless we use the proper means for the purpose of detecting how this secrecy is violated, when the fact is that it has been violated? Can that be done by propounding such vague questions as have been offered as a substitute by the Senator from New York, or the still more vague, if possible, question that has been suggested by the Senator from Georgia? Why, Mr. President, the office of such questions, when they are put to witnesses in court, is simply to elude and suppress the truth, instead of being an effective means of arriving at it; and there would be no other practical consequence resulting from putting such questions here.

It is the duty of the Senate to preserve its own secrecy in relation to this matter inviolably. It is the duty of the Senate to ascertain whether the publication of the matter has resulted from the Senate, either directly or indirectly. It never can prosecute effectually such an inquiry as that by propounding such questions as have been suggested, and the only mode by which it can be done is by taking the obvious and universal course of such investigations, adopted by the committee, itself in propounding to a party to whose possession this paper has been traced the question, "From whom did you get the paper?" It is not for the witness to whom such a question is propounded to direct or to mold the course of the investigation or the inquiry on the part of the committee. If they were to mold or to direct the manner in which the investigation should be prosecuted, it could never be brought to a successful result, and the only practical effect would be the suppression of the truth, instead of ferreting out and eliciting it from persons who were disposed to withhold it.

You can not have an effective investigation in any other mode and by any other form of inquiry than that which has been adopted by the committee itself. Now, suppose the question suggested by the Sena-

tor from New York was answered in the negative, and the question suggested by the Senator from Georgia was answered in the negative, would that at all tend to establish the conclusion that the secrecy of the Senate had not been improperly violated in some stage of the business by some member of the Senate or by some of its officers? Not at all. We are not attempting to fix the guilt of this disclosure upon the State Department or anywhere else; we are only engaged in the investigation of ascertaining whether this disclosure has resulted from the Senate or not. We are bound to vindicate the Senate from that imputation if the Senate be innocent of it; and if the Senate be not innocent of it, but be guilty of it, we are bound to fix that guilt upon the Senate, and we can not fix it in any other mode than by asking precisely such questions as the committee have asked of these witnesses. If the witness whose case is now under consideration be compelled to give the name of the party who delivered to him that paper, the committee of the Senate would immediately summon that party before it. It would then put the same question to that party.

* * * * *

Mr. HILL. Very well, sir; I will not interrupt the Senator further.

Mr. DAVIS, of Kentucky. I admit that the Senate has only the authority to exhaust its power in relation to this investigation. It has a right to summon witnesses before it, and whenever its committee get a witness before them who admits that he was in possession of this spurious paper, or this paper that was improperly published, and he can not trace it any further, he can not give any account how the paper got into his possession or from whom it came, the thread of the Senate's investigation is at an end, and it has to stop. I concede that; but I say that it is the duty of the Senate to exhaust all its practical power in this investigation. It is the duty of the Senate to adopt the means of investigating the truth and reaching it that leads most effectually to that conclusion.

The course adopted by the committee and the questions propounded by the committee are precisely of that character, and will probably lead to a disclosure of the truth upon that point. At any rate, they are much more likely to reach that conclusion than is the proposition of the Senator from Georgia or that of the Senator from New York; and if the Senate will adhere to the support of the committee in its line of investigation, as it ought to do, and that line of investigation should prove fruitless, the Senate will have done its duty to itself and to the country by having exhausted all its practical means of arriving at the truth, and then, if it fails, the Senate will not be a subject of ridicule at all; it will have failed after an honest and bona fide exercise of all its appropriate power to reach the truth; and it is the duty of the Senate to pursue the inquiry, I think, according to that line.

The VICE-PRESIDENT. The yeas and nays have been ordered, and the Secretary will call the roll on the amendment offered by the Senator from Georgia [Mr. Hill] to the amendment of the Senator from New York [Mr. Fenton].

The question being taken by yeas and nays, resulted—yeas 24, nays 34; as follows:

Yeas—Messrs. Anthony, Casserly, Cooper, Corbett, Crain, Davis of West Virginia, Fenton, Harlan, Hill, Kelly, Morton, Rice, Robertson, Saulsbury, Schurz, Sprague, Stevenson, Stockton, Sumner, Thurman, Tipton, Vickers, Wilson, and Windom—24.

Nays—Messrs. Ames, Blair, Boreman, Buckingham, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamilton of Maryland, Hamilton of Texas,

Hamlin, Hitchcock, Howe, Logan, Morrill of Maine, Morrill of Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Scott, Spencer, Stewart, Trumbull, and Wright—34.

Absent—Messrs. Bayard, Brownlow, Cameron, Gilbert, Johnston, Kellogg, Lewis, Nye, Pomeroy, Pool, Sherman, and West—12.

So the amendment to the amendment was rejected.

The VICE-PRESIDENT. The question recurs on the amendment of the Senator from New York [Mr. Fenton] as a substitute for the original resolution, upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 21, nays 37; as follows:

Yeas—Messrs. Blair, Corbett, Cragin, Davis of West Virginia, Fenton, Hamilton of Maryland, Hamilton of Texas, Harlan, Hill, Morton, Rice, Robertson, Saulsbury, Schurz, Sprague, Sumner, Thurman, Tipton, Vickers, Wilson, and Windom—21.

Nays—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Hitchcock, Howe, Kelly, Logan, Morrill of Maine, Morrill of Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Scott, Spencer, Stevenson, Stewart, Stockton, Trumbull, and Wright—37.

Absent—Messrs. Bayard, Brownlow, Cameron, Gilbert, Johnston, Kellogg, Lewis, Nye, Pomeroy, Pool, Sherman, and West—12.

So the amendment was rejected.

The VICE-PRESIDENT. The question recurs on agreeing to the resolution offered by the Senator from Wisconsin.

Mr. CARPENTER. I call for the yeas and nays.

Mr. TRUMBULL. Will the question upon that be taken together, or is it susceptible of division?

The VICE-PRESIDENT. The Chair thinks it is susceptible of division; but he will examine it and see.

Mr. TRUMBULL. The first question directed by the resolution to be propounded by the Chair is to know what excuse the witnesses have for treating the Senate with contempt. I am in favor of that question being propounded. The second question inquires of the witnesses whether they are ready to answer all proper questions that may be propounded to them by the committee. I desire to offer an amendment to that inquiry.

The VICE-PRESIDENT. The Chair, on examination, thinks the resolution is divisible, and the language used by the Senator who drew it seems to have had in contemplation that a division might be demanded, for it reads: "That the President of the Senate propound to him the following interrogatory," not "interrogatories," although two follow; it is in the singular.

Mr. CARPENTER. That is a mistake. It was intended to be "interrogatories." I intended to draw it as one resolution.

Mr. TRUMBULL. I desire to offer an amendment to the second interrogatory contained in the resolution; and I will ask for such a division as will allow me to do that.

The VICE-PRESIDENT. The Senator asks for a division of the second interrogatory.

Mr. CARPENTER. Let the resolution be amended by changing "interrogatory" to "interrogatories."

The VICE-PRESIDENT. The Senator from Wisconsin desires to modify the resolution. Is there objection? The Chair hears none; and it will be so modified. Does the Senator from Illinois desire the second interrogatory to be divided?

Mr. TRUMBULL. I can offer an amendment at this stage.

The VICE-PRESIDENT. It would be probably better for the journalizing of it to offer an amendment to the interrogatory at this stage.

Mr. TRUMBULL. Then I will move now to amend the second interrogatory by adding, after the word "committee," which, I believe, is at the end of the interrogatory, these words:

Touching the disclosure, directly or indirectly, through any member of the Senate, or any officer or employé thereof of what purports to be a copy of the treaty of Washington, now pending before the Senate in executive session.

So that, if amended, the second interrogatory will read:

Are you now ready to appear before said committee and answer all proper questions that may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate, or any officer or employé thereof, of what purports to be a copy of the treaty of Washington, now pending before the Senate in executive session?

Mr. President, my object in offering the amendment is to confine the investigation to a disclosure of this treaty through any member of the Senate or any of its officers or employés, and to compel the witnesses to answer any question touching a disclosure made in that way. There was some difference of opinion, I may say, in the committee as to how far the committee should go under the original resolution. The resolution is drawn broadly, and perhaps warrants the construction put upon it by the chairman of the committee. About that I desire to have no controversy, however; but I myself am not in favor of pushing this inquiry any further than to ascertain whether the disclosure of what purports to be a treaty pending before the Senate came out in any way, directly or indirectly, through the Senate, any of its members, or any of its officers or employés; and when we have done that, I think we have gone as far as duty requires us to go.

That the witnesses who are now at the bar of the Senate are in contempt for refusing to answer questions propounded to them by the committee seems to me very clear. I do not see how there can be two opinions about that; and I think it is proper that they should be called upon to explain to the Senate why they have not answered these questions that were propounded to them; and in order to limit the inquiry hereafter, to give these witnesses an opportunity to explain why they did not answer to the committee, and an opportunity to state deliberately whether they are willing to disclose any information which may be in their possession which shall in any manner, directly or indirectly, relate to a disclosure of this treaty through the Senate or any of its officers——

Mr. CONKLING. May I ask the Senator a question just there for my own information?

Mr. TRUMBULL. Certainly.

Mr. CONKLING. Suppose now—I take it as a supposed case, although the record shows that it is an actual case—it be the instance of a witness who, when he is asked, says over and over again, "I do not know whether this came from the Senate or not; I have no information that shows me it did; I have no information that shows me it did not; I can not tell about that;" under such an amendment as this, would not the witness be quite warranted, when the question is put to him, in saying, "I do not know that this particular question now points to any Senator or any employé of the Senate, and therefore it is not within the instructions of the committee; and, hence, I decline to answer, because it is not within the purview which the committee is permitted now to occupy?"

Mr. TRUMBULL. We shall not probably arrive at any proper conclusion, Mr. President, by putting supposable cases. Suppose I were to suppose that the witnesses were to testify that they had possession of this treaty before the Senate met; then I presume if they thus swore,

as a witness before the committee did swear, that a person came to him and offered to sell him this treaty before the Senate met——

Mr. EDMUNDS. Did he show it?

Mr. TRUMBULL. He did not; but if such should turn out to be the case, it would then be the duty of the committee to stop in its investigation in that direction and not to inquire any further under the resolution, if the amendment I offered should be adopted, than to exonerate the Senate entirely from any connection with the publication of the supposed treaty. Now, it will be for the committee to determine what are proper questions, and this amendment I have offered is for the guidance of the committee. The questions to be propounded by the Chair, should the amendment I have offered be adopted, will be to these witnesses to state here to the Senate whether they are prepared to go before the committee and answer all proper questions propounded by the committee touching the disclosure of this treaty in any manner or form through the Senate. If they say they are not prepared to do that and will not do it, then they must take the consequences, whatever they may be. If they say they are prepared to do it, that is as far as I desire to go. If the Senate agree with me in that I hope they will adopt the proposed amendment.

Mr. FENTON. I wish to suggest to the Senator from Illinois an amendment which I have no doubt he will be willing to accept, that this answer to the interrogatories, which are to be propounded by the Chair, as I understand, shall be made in writing and under oath, as the witnesses may require some time for a clear and full answer to the first interrogatory.

Mr. TRUMBULL. I do not know what the practice is in that respect, but I should have no objection, and I presume the Senate would have none, to allowing the witnesses a sufficient time, if they ask it, to prepare their answers.

Mr. FENTON. Will the Senator accept the modification I suggest?

The VICE-PRESIDENT. The resolution contemplates an answer orally by the witness, and the answer being reduced to writing by the Secretary. The practice, however, has been of late years to have the answer in writing.

Mr. TRUMBULL. If the witnesses should desire it, that would be a matter for the Senate to consider. If they desire time to answer, I imagine the chairman of the committee would have no objection to allowing them reasonable time.

The VICE-PRESIDENT. The Chair desires to state, also, that this resolution, differing from the usual practice, requires the witness to be sworn first before the Vice-President propounds to him the question as to whether he will answer questions. It seems to be needless to swear him before putting such an inquiry.

Mr. CARPENTER. Will not the Chair allow the resolution to be reported? If that is so, it is a mistake.

The VICE-PRESIDENT. The secretary will read that part after the interrogatories.

The CHIEF CLERK. The resolution reads:

And that said witness be first sworn by the Vice-President.

Mr. CARPENTER. "Be first sworn" and then answer the questions. He is not to be sworn as to the questions put to him by the Vice-President as to what excuse he has for not testifying before the committee.

The VICE-PRESIDENT. If it refers to the other questions it is in accordance with the practice.

Mr. CARPENTER. Certainly it does.

Mr. TRUMBULL. I suppose that could be settled afterward. I do not know whether the Senator from Wisconsin desires to require the answers orally. If the witnesses wish time, that might be left for future consideration when the witnesses propose to answer.

Mr. FENTON. I suggest that it can be easily disposed of now. Let the Senator from Illinois accept the modification.

Mr. TRUMBULL. That is not the proper place to put in the modification; the resolution would require amendment at another place, and I prefer not to accept any modification of my amendment. If that should be adopted, or should not be adopted, the Senator from New York in another portion of the resolution can make his motion.

The VICE-PRESIDENT. The first question is on the amendment of the Senator from Illinois [Mr. Trumbull].

Mr. CARPENTER. The amendment offered by the Senator from Illinois, as I understand him, is offered for the purpose of controlling the committee. It seems to me that if the Senate wants to control this committee, if the Senate thinks the committee has not prudence and discretion enough to conduct this examination, the proper way to hold it in leading strings is by a resolution instructing the committee what to do and what not to do, and how far to go and where to stop. But to make a contract with these witnesses, who are brought here in contempt, which contract is to bind the committee and to be an incidental and sideway instruction to the committee, and is intended to coax these witnesses to do what we say we have a right to order them to do, strikes me as being a novel mode of proceeding.

The course pointed out by the resolution is the straightforward, manly course, if we mean to say that we have the authority to compel those questions, which we say are proper, to be answered. Now, what is the propriety of entering into a contract with these witnesses to know if they will not do something else, or do it partially, or do it with certain limitations on the committee? Let the witnesses answer the questions which the Senate has said are proper questions, and if the Senate thinks the committee needs instruction or ought to be limited at all in the inquiry, do it by a resolution of instruction.

Mr. TRUMBULL. I think this is the very place to do it. The Senator himself has drawn a resolution stating the questions which are to be propounded by the Chair. The questions in this resolution are not to be propounded by the committee, they are questions to be propounded by the Chair to these witnesses, and the Senator from Wisconsin has drawn it himself in a form which asks of the witnesses whether they are ready to answer proper questions to be propounded by the committee. "Proper questions to be propounded by the committee," is his own language. Why does he put in "proper questions to be propounded by the committee?" Because the committee is acting under a resolution that has some limitation on it, and there is a difference of opinion in the committee as to what the resolution means. The Senator from Wisconsin regards it as broad as the world. Under his construction he could bring before him the principal officer of this grand high commission; he could summon the Secretary of State and ascertain what he had done; he could trace it to the hands of Earl de Grey, the president of the British high commissioners.

I did not understand the resolution to have that meaning. I do not so understand it now. I do not want to go into any such investigation. I think the limit of our investigation should be to exonerate the Senate; and I think it is proper here, when the Vice-President puts the question to these witnesses, and they are to discharge themselves from

the contempt which they are in to the Senate, to ask them whether they are willing to answer all proper questions propounded by the committee touching the disclosure of this treaty in any manner through the Senate. So far I am willing to go; beyond that I am not for going; and unless the Senator from Wisconsin wishes to go further I trust he will accept this amendment. If he does wish to go further, let the Senate so decide, and let us go into an investigation as broad as the world.

Mr. THURMAN, Mr. President, I wish to call the attention of the Senate to what seems to me to be the very singular position we occupy. If I am right the injunction of secrecy from the report made by the committee to the Senate yesterday and the testimony contained in that report was removed. I believe I am right in that.

The VICE-PRESIDENT. The Senator is correct.

Mr. THURMAN. That whole report, then, is before the public. Now, what does that report state in the very outset? It reads as follows:

The select committee appointed under and in pursuance of a resolution of the Senate of May 12, 1871, as follows:

And then comes the resolution verbatim:

Resolved, That a select committee of five Senators be appointed by the Chair, who shall investigate how and by whom the treaty known as the treaty of Washington and other recent proceedings of the Senate in executive session were made public, and that said committee have power to send for persons and papers.

Not to inquire whether a paper purporting to be the treaty has been made public.

Mr. MORTON. That was the very point on which the Senator interposed to correct me.

Mr. THURMAN. My question, therefore, had no pertinence, and if I had recollected this resolution I would not have put the question to the Senator. The Senate has made this treaty public itself; it has removed the injunction of secrecy from the treaty; it has in effect declared that the publication purporting to be the treaty is the publication of the treaty, and therefore has said to the whole world, "The treaty is before you," and yet we are to pursue an investigation to find how it got out.

Mr. SCOTT. Will the Senator from Ohio permit me to call his attention to the very clear distinction which he made in his former speech, that we are not inquiring as to how the treaty got out, but we are inquiring into what reason these witnesses have for refusing to answer how it got out?

Mr. THURMAN. I know that is the question, and I am not going to take back what I said before; but the question is, whether the Senate, on this 17th day of May, after having, no longer ago than yesterday, itself made the treaty public, is going to pursue the investigation in respect to these young men. I say it is about time to stop. If there were any great public considerations which required that this treaty should be kept secret, and which would therefore make it a matter of the highest duty on the part of the Senate to find out who published what purported to be the treaty, then there might be some reason in pursuing this thing further; but, after the Senate itself has decided that the treaty ought to be made public; after the Senate itself has in effect removed the injunction of secrecy from it, and thus shown that there was no great public reason why it should be kept from the people, I do not think there is any necessity for us to pursue this attempt any further, and for that reason I shall vote for any and every motion that will limit it, or rather I should be willing to abandon it altogether.

Mr. HOWE. Mr. President, I would have voted to remove the injunction of secrecy from this treaty on any day or hour that the question might have been presented to me. Why? Because, in my judgment, there was no detriment to come to the Republic or to any other interest in the world in making it public. I did not make it public, because I was not authorized to do so. When the treaty came into my possession it came into my possession confidentially, and I was not authorized to make it public. If it had come into my hands not in confidence, if I had been the editor of a newspaper and the treaty had been placed in my hands, not under any injunction of confidence whatever, I should have published it or not published it precisely as my judgment thought the public interest would warrant. If I thought the public interest would be subserved by giving the treaty to the public I should have done it, because it was in my possession and I could do so without violating any confidence reposed in me, and could do so without violating any law of the land. That would have been the rule which would have guided me. If the question had been put to me as a Senator whether I would vote to publish the treaty or not, I should have said "aye," because I could vote "aye" or "no" as I pleased without violating any duty. It was an exercise of my own judgment.

But now, Mr. President, that simply disposes of the question of the propriety of publishing the treaty. This treaty has gone to the public; I do not know but that it has gone to the public with full authority. The Senate had authority to give it to the public, but the Senate did not in the first instance. I have no manner of doubt that the President had authority to give it to the public, and I do not know but that he did. I have no manner of doubt but that the Secretary of State had authority to give it to the public, and I do not know but that he did. I have no doubt but that the presidents of the joint high commission on the part of the United States and on the part of Great Britain had authority to give it to the public, and I do not know but that they did. The only thing that makes me think they did not is the fact that two gentlemen who seem to know who did give it to the public or through whose instrumentality it was given to the public refuse to tell.

If the President authorized the publication of it, I do not see why they should refuse to tell. If the Secretary of State, if the president of the British commissioners authorized it, I do not see why they should refuse to tell it. That leads to a presumption in my mind that somebody communicated it to these witnesses, and in doing so violated a duty reposed in him. Who it was I do not know. I do not suppose it makes much difference to the public who it was. Perhaps it was a higher offense for a Senator to do it than for some officer of less responsibility than a Senator is supposed to have to do it. But the public is proportionately as much interested to know whether it was a clerk in one of your offices here, or a clerk in the State Department, or a clerk anywhere else, as to know whether it was a Senator. If it involved a breach of trust, and if that breach of trust was committed by some one in the public employ, the public is interested to know who it was, because he has been in the public employ long enough. A Senator suggests, "Suppose it was the Public Printer" —

Mr. TRUMBULL. He is an officer of the Senate.

Mr. HOWE. If it was the Public Printer, if it was a clerk of ours, if it was anybody responsible to us for his conduct, we perhaps could punish him, and so we should have a double interest in ascertaining that

fact; but if it was a clerk in anybody else's employ connected with the public service there is an interest in knowing who and where the man is, because somewhere there is authority to reach him. I can well conceive that it might have been committed to the keeping of these witnesses by a subordinate in some Department, and without possibly the breach of any trust. Why? Because it might have fallen into the possession accidentally or by design of some clerk, and he might not know that it was his duty to keep it from the public. I can conceive of a case of mistaken duty like that; but then if that was the case the only consequence would be that there would be no punishment to be meted out to that individual. The trouble is now that we do not know whether there is any punishment belonging to anybody, deserved by anybody, and we do not know who is to inflict that punishment. Suppose punishment should be due. Nobody has any idea of punishing a newspaper for publishing this treaty; nobody has any idea of punishing a correspondent who gets possession of the treaty without any breach of confidence on his part and so communicates it to the public. I do not know that he has violated any duty but by that particular act of his.

Now, Mr. President, I can not vote for the amendment proposed by the Senator from Illinois, because I am not merely interested to know whether it is a Senator or a clerk of ours who has been guilty of this breach of confidence; I am interested to know whether anybody in the public service has violated that duty or not. That is the question, I think, which interests the public. The public does suspect that there are a great many men in its service who ought not to be in its service. Here is an indication that somebody is in its service who ought not to be in it, who is not to be trusted. Now, why not pursue that inquiry? I admit, if the end of our inquiry was to ascertain whether one of ourselves had been guilty of this breach of confidence, the amendment proposed by the Senator from Illinois might achieve that purpose. The committee would still have authority to put any questions to the witnesses which tended to elicit that information; but, then, I want to say to the Senator from Illinois that after all, if they pursue that inquiry solely with a view to attain that end, it would be impossible for them to reach that result without at length putting to these very witnesses the question which was put by the committee.

Mr. TRUMBULL. Suppose they show that they had it on Monday, before the Senate met?

Mr. HOWE. Then, if it could be shown conclusively that no Senator, no officer connected with the Senate, had a copy of it as early as the Monday before, that would, of course, exculpate all of us.

Mr. TRUMBULL. It had not been communicated to the Senate then?

Mr. HOWE. But it might have been communicated to a Senator, and in confidence.

Mr. TRUMBULL. The resolution is not for that purpose; it is to inquire how the proceedings of the Senate were disclosed.

Mr. HOWE. I understand the resolution to be directed to the inquiry how this treaty was communicated.

Mr. TRUMBULL. How this treaty "and other proceedings of the Senate."

Mr. HOWE. Very well, but the treaty is one thing; "other proceedings of the Senate" are another thing. That is my understanding of the resolution; that is my understanding of the purpose at which the resolution is aimed; and it seems to me we do not meet the duty we owe to the public until we ascertain whether anybody connected with

the public service has been guilty of this breach of trust or not. That is why I can not vote for any of these amendments, and I think—and I must be allowed to say this one word before I sit down—that the idea that we have any duty to discharge toward that unknown individual, if there be any such, who, in violation of a trust reposed in him, authorized the giving of this treaty to the public is a mistaken idea.

The witnesses do not, the Senate do not, the New York Tribune do not, the Cincinnati Commercial do not owe any duty in the world to the at person; can not owe it to him. If he has been guilty of the breach of a trust nobody is authorized, in my judgment, to do anything to cover it up. He had his own reasons for incurring that guilt; he can answer for that whenever he is called upon to answer. At present he is not. There is a question of the power of the Senate involved here to enforce an answer to a question, the answer to which the Senate seems to think is important to the public welfare.

The VICE-PRESIDENT. The question is on the amendment offered by the Senator from Illinois [Mr. Trumbull] to the second interrogatory in the original resolution.

Mr. CARPENTER called for the yeas and nays, and they were ordered; and being taken, resulted—yeas 29, nays 28; as follows:

Yeas—Messrs. Anthony, Blair, Casserly, Corbett, Cragin, Davis, of West Virginia, Fenton, Gilbert, Hamilton, of Maryland, Hamilton, of Texas, Harlan, Hill, Kelly, Morton, Rice, Robertson, Saulsbury, Schurz, Scott, Sprague, Stevenson, Stockton, Sumner, Thurman, Tipton, Trumbull, Vickers, Wilson, and Windom—29.

Nays—Messrs. Ames, Boreman, Buckingham, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Cooper, Davis, of Kentucky, Edmunds, Ferry, of Connecticut, Ferry, of Michigan, Flanagan, Frelinghuysen, Hamlin, Hitchcock, Howe, Morrill, of Maine, Osborn, Patterson, Pratt, Ramsey, Sawyer, Spencer, Stewart, and Wright—28.

Absent—Messrs. Bayard, Brownlow, Cameron, Johnston, Kellogg, Lewis, Logan, Morrill, of Vermont, Nye, Pomeroy, Pool, Sherman, and West—13.

So the amendment was agreed to.

The VICE-PRESIDENT. The question recurs on agreeing to the resolution as amended.

Mr. FENTON. Is it in order now to amend the resolution further?

The VICE-PRESIDENT. It is.

Mr. FENTON. I propose at the proper place to insert an amendment, which the Secretary can reduce to form in proper language, that the answers to the interrogatories propounded by the Chair shall be in writing and under oath.

The VICE-PRESIDENT. The Senator from New York moves to amend the resolution, as the Chair understands, by striking out the words “and shall be required to answer the same,” and inserting “and this answer to the interrogatories shall be in writing and under oath.”

Mr. CARPENTER. That question which they are to ask time of the Senate to consider and then address the Senate in writing upon is, whether they are willing to appear before the committee and answer proper questions.

The VICE-PRESIDENT. The question is on the amendment of the Senator from New York.

Mr. FENTON. I ask for the yeas and nays on that amendment, and in doing so I will make this single statement: It does not interfere at all with the prerogatives of the committee. The “proper questions” suggested in the interrogatories may still be propounded by the committee without any abridgement and the answers given orally. This relates solely to the replies that these witnesses are called upon to make to the interrogatories propounded by the Chair.

Mr. FERRY, of Connecticut. What are they?

Mr. FENTON. Let them be read.

Mr. CARPENTER. In the first place, what their excuse is for not answering, and second, whether they are willing to go before the committee and answer.

Mr. FERRY, of Connecticut. Does the Senator from New York mean that they shall have time to answer those questions in writing?

Mr. FENTON. I meant to give them time, and it is in accordance, I am informed by the President of the Senate, with the usage in such cases.

Mr. MORTON. That embraces the interrogatory which was amended on the motion of the Senator from Illinois?

Mr. FENTON. Yes, sir.

Mr. CARPENTER. I simply wish to remind the Senate, without wasting time, that this witness testified to the committee, as the report shows, that he came to the examination with a fixed purpose not to disclose the source from which this paper was obtained. And one of these witnesses at least was asked if he required any time to consider the matter, after the committee had advised him that it was their unanimous opinion that he would be in contempt if he refused to answer, and he declined to take any time. Now, it is proposed, not asked, as I understand, by the witness or by any counsel of his, but it is proposed by a Senator, to let Mr. White retire and consult with himself and address a communication in writing to the Senate on this subject!

Mr. SUMNER. I would call attention to a precedent which is before me, entitled "contumacious witness," and I think it is the last that has occurred in this Chamber. It was when, on the motion of Mr. Mason, the author of the fugitive-slave bill, and at the time chairman of the committee known as the Harpers' Ferry investigating committee, summoned several witnesses from the North to testify, hoping to implicate them in the proceedings of John Brown at Harpers' Ferry. One of those witnesses was a well-known citizen and inventor, Thaddeus Hyatt, of New York. He was asked to answer certain questions. He declined. On his declining he was brought to the bar of the Senate, when this incident ensued:

Mr. MASON. I move that the witness be brought into the Chamber, in pursuance of the order of the Senate.

The VICE-PRESIDENT. The Sergeant-at-Arms will fulfill the order.

The Sergeant-at-Arms appeared at the bar, having in his custody Mr. Hyatt.

The VICE-PRESIDENT—

The Vice-President then was Mr. Breckinridge—

The VICE-PRESIDENT. Mr. Hyatt, are you prepared now to answer the questions which I asked you by order of the Senate?

Mr. HYATT. Yes, sir; I am. I have my answer here. I am not able to read it. I hope the Clerk will read it for me.

Mr. MASON. I propose that the document which the witness tenders be received at the desk of the Secretary and examined, to see if it contains answers to the interrogatories put to him, and whether they are under oath.

The motion was agreed to; and the Sergeant-at-Arms took the answer to the Secretary's desk.

The VICE-PRESIDENT. The Secretary informs the Chair that it purports to be an answer to the two interrogatories, and that it is under oath.

Mr. MASON. I observe, by a cursory look at the document, that it is a very long one. A great deal, or a portion of it at least, is apparently printed matter. I do not know how we can ascertain even the substance without reading it, or at least so much of it as to see its character, so that we can determine whether to receive it, or to refer its consideration to the committee or not. I propose, therefore, that it be

read for the present, in order to see what it contains. If necessary, the reading can be stopped at any particular point.

The VICE-PRESIDENT. If there be no objection the Secretary will proceed with the reading of the answer.

Mr. MASON. The witness may take a seat.

The Sergeant-at-Arms conducted him to a seat behind the bar.

The Secretary proceeded to read the answer as follows.

After reading for some time Mr. Mason interfered to arrest the reading. He did not like it; and then it appeared that a Senator who now has the honor.

Mr. CARPENTER. Allow me to ask whether that paper that was produced was an answer to these preliminary questions, or whether he had purged himself of the contempt and that paper was in answer to the interrogatories?

Mr. SUMNER. The questions propounded to him were:

1. What excuse have you for not appearing before the select committee of the Senate, in pursuance of the summons served on you on the 24th day of January, 1860?

There were two interrogatories on this occasion as now.

2. Are you now ready to appear before said committee and answer such proper questions as shall be put to you by said committee?

That second interrogatory is nearly coincident with that now before the Senate, except so far as it has been amended on the motion of the Senator from Illinois.

Mr. CARPENTER. And the witness produced his answer in writing?

Mr. SUMNER. In writing under oath.

Mr. CARPENTER. But he first purged himself of contempt by being here and ready to answer.

Mr. SUMNER. I call attention to this as the last precedent that we have. Whether the Senate will think it advisable to pursue it is for them to judge; but the Senate will bear in mind that this answer was in writing and under oath, precisely as is contemplated by the motion of the Senator from New York.

Mr. CARPENTER. He did not appear there and ask for time after having had ample opportunity, but came with a document so lengthy that nobody could read it.

Mr. SUMNER. It was read, because I had the honor of a seat in this Chamber at the time, and I insisted that it should be read.

Mr. CARPENTER. I understood the Senator to say that the reading was interrupted.

Mr. SUMNER. The reading was interrupted by Mr. Mason.

Mr. CARPENTER. And was it afterwards resumed?

Mr. SUMNER. On my protest it was resumed.

The VICE-PRESIDENT. The Chair is familiar with the case. A point of order was made by Mr. Foster, afterwards President *pro tempore* of the Senate, that as the Senate had to vote on the reasons of the person at the bar they had a right to hear those reasons, and they must be stated to the body, and the paper was read, though it was at considerable length. Even Mr. Toombs at last insisted that the reasons should be read in full and considered.

Mr. FENTON. I suppose if this amendment should prevail it would be entirely competent for the witnesses to present their reply in writing and under oath at the hour; but if that were at all inconvenient, it would then be competent for the body, and the courtesy of the Senate as well as its duty would induce it, to extend proper time for them to make an answer under oath as contemplated in the amendment,

The VICE-PRESIDENT. The Senator from New York demands the yeas and nays on the question of agreeing to his amendment.

The yeas and nays were ordered.

The CHIEF CLERK. The amendment is to strike out the words "and that he be required to answer the same," and in lieu thereof insert "and that the answers to those interrogatories shall be in writing and under oath."

The VICE-PRESIDENT. The Secretary did not read all the matter to be stricken out; the words "and that the Secretary of the Senate reduce his answers to writing" are also proposed to be stricken out.

The CHIEF CLERK. The words to be stricken out are:

And that he be required to answer the same, and that the Secretary of the Senate reduce his answers to writing.

And in lieu thereof it is proposed to insert:

And that the answers to these interrogatories shall be in writing and under oath

Mr. CARPENTER. If that amendment stands he may file the paper called his answer at any time during his natural life, or subsequently by his executors.

Mr. THURMAN. No; it will be for the Senate to say.

The VICE-PRESIDENT. The resolution will still be open to amendment as fixing a time.

Mr. THURMAN. That can be amended by saying that he shall do it within such a time after the adoption of the resolution, or we can adopt the resolution thus amended and then fix the time, which would be a better course.

Mr. FENTON. Certainly. We can see what time the parties desire.

Mr. THURMAN. Some one may inquire of them what time they ask. Perhaps the Senator from New York could learn it from them.

The VICE-PRESIDENT. The yeas and nays have been ordered on the amendment of the Senator from New York.

Mr. HARLAN. If I understood the reading correctly, there are some words proposed to be stricken out that I think ought to be retained. The words to which I refer are, "and that they be required to answer the same."

Mr. CONKLING. Oh, you might as well strike them out.

Mr. HARLAN. Why?

Mr. CONKLING. Because the more you strike out the more you defeat the inquiry.

Mr. FENTON. Those words are not to be stricken out.

Mr. HARLAN. I thought not. The amendment is simply to give them an opportunity to answer in writing instead of orally.

Mr. CARPENTER. The amendment, as it stands, instead of requiring them, simply authorizes them to answer.

The VICE-PRESIDENT. The Senator from New York perhaps had better reduce his amendment to writing. The Secretary endeavored to take it down as it was stated orally, and perhaps has not got it as explicit as the mover desires.

Mr. FENTON. I will endeavor to put it in writing.

The VICE-PRESIDENT. The Chair will suggest that perhaps the question would be definitely settled by putting the amendment in this shape, if it meets the approval of the Senator from New York: Strike out the words "and that the Secretary of the Senate reduce his answers to writing," and in lieu of those words insert "and his answers shall be in writing and under oath," so as to read, "and that he be required

to answer the same, and his answers shall be in writing and under oath."

Mr. FENTON. That is correct.

Mr. CASSERLY. I suggest to the Senator from New York that his object probably is not to place the respondents at the bar under any compulsion as to answering in writing, but to allow them to answer in writing if they prefer it. That is, their answer may be either oral or in writing, at their option.

Mr. THURMAN. That can be effected by a simple change of a word, by using the phrase "may be" instead of "shall be."

The VICE-PRESIDENT. Does the Senator from New York modify his amendment according to that suggestion?

Mr. FENTON. I have no objection to that.

The VICE-PRESIDENT. The Senator from New York modifies his amendment so as to provide that the witness shall be required to answer, and may answer in writing and under oath. Are the yeas and nays still called for on the amendment in this form?

Mr. CARPENTER. Yes, sir.

The question being taken by yeas and nays, resulted—yeas 27, nays 31; as follows:

Yeas—Messrs. Blair, Casserly, Corbet, Cragin, Davis, of West Virginia, Fenton, Gilbert, Hamilton, of Maryland, Hamilton, of Texas, Harlan, Hill, Kelly, Morton, Osborn, Rice, Saulsbury, Schurz, Sprague, Stevenson, Stockton, Sumner, Thurman, Tipton, Trumbull, Vickers, Wilson, and Windom—27.

Nays—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry, of Connecticut, Ferry, of Michigan, Flanagan, Frelinghuysen, Hamlin, Hitchcock, Howe, Logan, Morrill, of Maine, Morrill, of Vermont, Patterson, Pratt, Ramsey, Sawyer, Scott, Spencer, Stewart, and Wright—31.

Absent—Messrs. Bayard, Brownlow, Cameron, Johnston, Kellogg, Lewis, Nye, Pomeroy, Pool, Robertson, Sherman, and West—12.

So the amendment was rejected.

The VICE-PRESIDENT. If there be no further amendment the question is on agreeing to the resolution as amended, upon which the yeas and nays have been demanded by the Senator from Wisconsin [Mr. Carpenter].

The yeas and nays were ordered.

The Chief Clerk read as follows:

Resolved, That Z. L. White, now in the custody of the Sergeant-at-Arms on an attachment for contempt in refusing to answer certain questions propounded to him while he was being examined as a witness by a select committee of the Senate thereto duly authorized, be arraigned at the bar of the Senate; and that the President of the Senate propound to him the following interrogatories:

First. What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May, instant?

Second. Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate, or any officer or employé thereof, of what purports to be a copy of the treaty of Washington, now pending before the Senate in executive session?

And that he be required to answer the same, and that the Secretary of the Senate reduce his answers to writing. And that the said witness be first sworn by the Vice-President; and that the Vice-President then propound to him the several interrogatories which were propounded to him by the committee and which he refused to answer, as shown by the report of said committee; and that said witness be required to answer the same, and that the Secretary of the Senate reduce his answers to writing.

Mr. SUMNER. Mr. President, I have not said anything on this question; others have spoken; nor am I disposed now to occupy the atten-

tion of the Senate; but I would suggest to the Senate, have we not proceeded far enough in this business? Two days, and there is the result, and the business not yet ended. The old exclamation of the Roman tribune, sir, was, "To what good purpose?" Every Senator might repeat that now: *Cui bono?* To what good purpose can we proceed further? I think the Senate had better stop. I think they have gone far enough in this business. They have shown a reasonable alacrity in giving two days to the inquiry. Is it expedient to give I know not how many more days? I make this inquiry by way of suggesting the conclusion that we had better vote this resolution down, and that will be notice that we abandon for the present this whole inquiry. I do not think any good can come out of it. It will not be advantageous to the Senate or to the country. On the contrary, I believe both will suffer.

Mr. STEWART. Mr. President, I do not propose to occupy the attention of the Senate more than a moment. I think it is prejudicial to the Senate and to the country for us to pretend to have secret sessions and to have the proceedings of such sessions constantly published. I have no fault to find with the newspapers for publishing them, but I do believe that there is somebody in the Senate who does give the information; that there is somebody here sitting with us who is betraying us constantly. That is evident. Long speeches are given out constantly. Such things bring the Senate into contempt. It seems to me that we should go on with this investigation and other investigations while we have the rule, and while the rule is violated. Otherwise, abrogate the rule.

Mr. SUMNER. That is right.

Mr. STEWART. Abrogate the rule or enforce it. Do not have portions of the Senate abiding by the rule and others violating it. The manifest injustice of that is seen by the world and felt, and it is a common subject of remark. Anyone who has read the newspapers for the past year or two can very well see how the matter stands. Now, I say I am in favor of either investigating this matter or abandoning the rule and having the reporters in the Senate Chamber all the time. While we have the rule, and while we have a plain case of contempt before us, I shall be governed by the rule as I am now, and refrain from imparting the secrets of the Senate.

Mr. CARPENTER. Mr. President, after all that has been said I desire to add but one word. Of course, I have no personal knowledge on this subject; but I desire to say that, from what I have heard and seen, my judgment is that this publication was made through the Senate. My belief is that if the committee can be left to exercise the ordinary powers that belong to such a committee they will develop that fact and establish it. Now, if the Senate do not want to do that, very well; I have no anxiety about it. I was appointed by the Chair upon this committee, and I have served in good faith, supposing the Senate wanted this matter investigated. If they do they will let us go on. If they do not they will stop us.

The VICE-PRESIDENT. The question is on the resolution as amended, on which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 42, nays 14; as follows:

Yeas—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Corbett, Davis, of Kentucky, Edmunds, Ferry, of Michigan, Flanagan, Frelinghuysen, Gilbert, Hamilton, of Texas, Hamlin, Harlan, Hill, Hitchcock, Howe, Kelly, Logan, Morrill, of Maine, Morrill of

Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Scott, Spencer, Stevenson, Stewart, Stockton, Trumbull, Windom, and Wright—42.

Nays—Messrs. Blair, Davis, of West Virginia, Fenton, Hamilton, of Maryland, Morton, Rice, Saulsbury, Schurz, Sprague, Sumner, Thurman, Tipton, Vickers, and Wilson—14.

Absent—Messrs. Bayard, Brownlow, Cameron, Cragin, Ferry, of Connecticut, Johnston, Kellogg, Lewis, Nye, Pomeroy, Pool, Robertson, Sherman, and West—14.

So the resolution, as amended, was agreed to.

The VICE-PRESIDENT. The Sergeant-at-Arms will execute the order of the Senate.

[The Sergeant-at-Arms proceeded to the seat occupied by Mr. White, and thence conducted him down the center aisle to the area in front of the Secretary's desk, where he stood.]

The VICE-PRESIDENT. Mr. White, I am directed by the Senate to propound to you two interrogatories and ask answers thereto orally, which will be reduced to writing by the Secretary. I will read them first together, and will afterward propound the interrogatories separately. The two questions are as follows:

First. What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May, instant?

Second. Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate, or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?

I will now read to you the first interrogatory and ask your answer thereto:

What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May, instant?

Mr. WHITE. Mr. President, before proceeding to answer that question, I would ask of the Senate time to prepare an answer.

Mr. SUMNER. I hope the witness will have that indulgence.

The VICE-PRESIDENT. The Chair supposes the request applies to the other question also.

Mr. WHITE. Yes, sir.

The VICE-PRESIDENT. Having heard both interrogatories, the witness, in response to the first interrogatory states that he desires time to make an answer. The exact words will be reported by the Secretary or the phonographic reporter.

Mr. SUMNER. Suppose we now adjourn with the understanding that the witness be at the bar to-morrow in readiness.

Mr. CONKLING. Perhaps the better way would be for the chairman of the committee who has this proceeding in charge to ascertain how much time the witness wants.

Mr. CARPENTER. I should like to inquire of the witness what time he needs?

Mr. WHITE. I will be ready to reply to-morrow.

Mr. CARPENTER. At 12 o'clock?

Mr. WHITE. Yes, sir.

Mr. CARPENTER. I think that entirely proper.

The VICE-PRESIDENT. The Senator from Wisconsin moves that the witness have until 12 o'clock to-morrow to prepare his answer to the interrogatories. The question is on that motion.

The motion was agreed to.

The VICE-PRESIDENT. Mr. White will return to his chair.

[The Sergeant-at-Arms then escorted Mr. White to the chair heretofore provided for him.]

Mr. THURMAN. I move that the Senate adjourn.

Mr. CONKLING. I ask the Senator to withdraw that motion for a moment. The other witness ought not to be left in the predicament in which he is. He may want time also. [Laughter.]

Mr. THURMAN. No resolution has been passed in respect to Mr. Ramsdell. I think he had better assume that it will be passed and have his answer ready to-morrow.

Mr. TRUMBULL. But we have not passed a resolution as to him.

The VICE-PRESIDENT. If the Senator from Ohio insists on his motion to adjourn it is not debatable.

Mr. THURMAN. I do insist on the motion.

The question being put, the Senate refused to adjourn.

Mr. CARPENTER. Now, I offer in the case of Mr. Ramsdell the same resolution which I offered in the case of Mr. White, simply changing the name to H. J. Ramsdell.

Mr. TRUMBULL. The Senator had better offer it in the form in which it was adopted in the other case.

Mr. CARPENTER. Yes, sir; I offer it in the form in which the Senate adopted it, simply changing the name.

The VICE-PRESIDENT. The Senator from Wisconsin offers a resolution in regard to H. J. Ramsdell of the same character as that adopted by the Senate in the case of Z. L. White, including the amendment which was offered by the Senator from Illinois [Mr. TRUMBULL] and adopted by the Senate.

Mr. CARPENTER. In the same words precisely, with the exception of the name.

The VICE-PRESIDENT. Does any Senator desire that the resolution be reported? ["Oh, no!"]

The resolution was agreed to. So it was

Resolved, That H. J. Ramsdell, now in the custody of the Sergeant-at-Arms on an attachment for contempt in refusing to answer certain questions propounded to him while he was being examined as a witness by a select committee of the Senate, thereto duly authorized, be arraigned at the bar of the Senate; and that the President of the Senate propound to him the following interrogatories:

"*First*. What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May instant?

"*Second*. Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?"

And that he be required to answer the same; and that the Secretary of the Senate reduce his answers to writing, and that the said witness be first sworn by the Vice-President, and that the Vice-President then propound to him the several interrogatories which were propounded to him by the committee, and which he refused to answer, as shown by the report of said committee; and that said witness be required to answer the same, and that the Secretary of the Senate reduce his answers to writing.

The VICE-PRESIDENT. The Sergeant-at-Arms will execute the order of the Senate.

[The Sergeant-at-Arms conducted Mr. Ramsdell to the end of the center isle, near the area in front of the Secretary's desk, where he remained standing.]

The VICE-PRESIDENT. Mr. Ramsdell, I have been directed by the Senate of the United States to propound to you the following interrog-

atories, which you are required to answer orally, and the Secretary will reduce your answer to writing:

First. What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May instant?

Second. Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?

Mr. RAMSDELL. Mr. President, I shall also ask time until to-morrow to prepare my answer.

Mr. CARPENTER. To-morrow at 12 o'clock?

Mr. RAMSDELL. Yes, sir.

The VICE-PRESIDENT. Mr. Ramsdell desires until 12 o'clock to-morrow to make his answer.

Mr. CARPENTER. I move that that time be granted.

The motion was agreed to.

MAY 18, 1871.

[Congressional Globe, p. 863.]

RECUSANT WITNESSES.

The VICE-PRESIDENT. The Senator from Wisconsin now demands the regular order, which is the execution of the order of yesterday. The Sergeant-at-Arms will present Mr. White at the bar of the Senate.

[The Sergeant-at-Arms conducted Z. L. White to the area in front of the Secretary's desk, where he remained standing.]

The VICE-PRESIDENT (addressing the witness). Mr. White, by direction of the Senate yesterday I propounded to you two interrogatories which the Senate resolved that you should have until 12 o'clock to-day to answer. Have you your answer now ready?

Mr. WHITE. Yes, sir.

The VICE-PRESIDENT. Do you desire to read it yourself, or shall the Secretary read it for you?

Mr. WHITE. I will read it myself.

He then proceeded to read from manuscript as follows:

To the first interrogatory my answer is as follows:

"My excuse for not answering the several interrogatories propounded to me by the members of the special committee of the Senate, before which committee I was examined as a witness on the 15th day of May instant, is, that it would be in violation of my professional honor. My profession is to collect news in this city and to transmit it by telegraph to the journal which I represent. It is the uniform practice of members of my profession to regard as confidential the sources of all the news they receive, and there is always an implied promise of secrecy whenever information passes into the hands of a newspaperman. This pledge of secrecy is considered among my professional associates as a client's secrets are to an attorney, a patient's secrets to a physician, or those of a dying man to a minister of the gospel; and were I, therefore, to violate it by answering the questions propounded, I firmly believe that I should render myself infamous in the eyes of my professional associates."

To the second interrogatory I make the following answer:

"I have already testified before the special committee of the Senate that I did not receive what purports to be a copy of the treaty of Wash-

ington from any Senator or officer of the Senate; that it was printed on folio pages, a single column on each page; and that I first saw it at or about 10 o'clock on the night of May 10, instant. I have since been informed that the copy which I thus described was not a Senate document, but was one printed by order of the State Department, of which, I am also informed, forty or more copies were printed for the use of the Department and for distribution. I am now ready to go before the special committee of the Senate and to testify that neither directly nor indirectly did I receive the copy of what purports to be the treaty of Washington from any Senator or officer of the Senate, nor, so far as I know, from any employé thereof."

[The Sergeant-at-Arms took the written answer of Mr. White to the Secretary's desk.]

Mr. CARPENTER. I suppose the witness will now be sworn to answer the interrogatories propounded to him by the committee, and which he refused to answer to the committee. That was a part of the order of the Senate.

[Mr. White, who, at the close of the reading of his answer, had been requested by the Vice-President to resume his seat, was again brought forward to the area in front of the Secretary's desk.]

The VICE-PRESIDENT (to Mr. White). In accordance with the resolution of the Senate I now administer an oath to you that you will true answers make to the questions which I shall propound. [Administering the oath.] "You, Z. L. White, do solemnly swear that the answers you shall make to the questions propounded to you shall be the truth, the whole truth, and nothing but the truth. So help you God." The answers that you make will be reduced to writing by the Secretary. The first question which, by the report of the committee, it appears you declined to answer was the following: "Was that copy"—referring to the alleged copy of the treaty of Washington which you telegraphed—"furnished in print or written manuscript?"

The WITNESS. I first saw it in print.

The VICE-PRESIDENT. The second question which you declined to answer was the following: "How long had you had in your possession that copy before it was telegraphed?"

The WITNESS. I telegraphed it immediately on receiving it.

The VICE-PRESIDENT. The third question which you declined to answer was the following: "From whom did you obtain the copy, or the document from which the copy was made, which was left in the telegraph office for transmission to this paper?"

The WITNESS. That question I respectfully decline to answer for the reason given in my answer to the first interrogatory.

The VICE-PRESIDENT. The next question which you declined to answer was: "Where did you obtain it?"

The WITNESS. I obtained it at 10 o'clock, or about 10 o'clock, on the night of May 10.

The VICE-PRESIDENT. The question is not when, but "where did you obtain it?"

The WITNESS. That question I respectfully decline to answer for the reason stated in my answer to the first interrogatory.

The VICE-PRESIDENT. The next question appears to be a continuation of the previous question, and is as follows: "And you refuse to answer from whom, and when, and where you did obtain it?"

The WITNESS. I have already answered when I obtained it. As to the other two points I respectfully refuse to answer.

The VICE-PRESIDENT. The next question you did not positively decline to answer, and I will read the question and the answer:

Question. Was the copy that you saw a printed copy? I do not ask about what you furnished, but was it a printed or manuscript copy that you saw?

Answer. I prefer not to answer that.

The WITNESS. I now say it was a printed copy.

The VICE-PRESIDENT. The Chair on turning over the report of the witness's testimony before the committee ascertains that subsequently that the witness did answer before the committee that it was in print. [To the witness]. The next question which you declined to answer before the committee was: "Did you pay anything, and, if so, how much, for that copy which you obtained?"

The WITNESS. That question, for the reason stated in my answer to the first interrogatory, I respectfully decline to answer.

The VICE-PRESIDENT. The next question referring to this copy is: "What did you do with it?" You answered to the committee, "I respectfully refuse to answer that question."

The WITNESS. I give the same answer here.

The VICE PRESIDENT. The next question was, "When did you last see it?"

The WITNESS. I give the same answer that I have previously given.

The VICE-PRESIDENT. The next question was, "where did you last see it?"

The WITNESS. I respectfully decline to answer the question.

The VICE-PRESIDENT. Referring to the time when you obtained this alleged copy of the treaty the question was asked, "Who else was there besides you?" and you respectfully declined to answer it.

The WITNESS. I respectfully decline to answer it.

The VICE-PRESIDENT. Another declination of an answer was made with a qualification, and the Chair will read the question and the answer:

Question. Was Mr. Flagg, one of the clerks of the Senate, in that room between 10 and 1 o'clock that night?

Answer. I respectfully refuse to answer that. I believe I have testified that no officer of the Senate furnished the treaty to me."

Mr. CARPENTER. That question he did fully answer subsequently. Mr. Flagg was not there, and he did not see him that night.

The VICE-PRESIDENT. The Chair, on looking further at the testimony, sees that it was subsequently answered, that he was not present that night at all. (To the witness). The next question which you declined to answer was, "And you refuse to tell who was in the room that night?"

The WITNESS. I still decline to answer that question.

The VICE-PRESIDENT. After consultation by the committee you were recalled, and after some remarks by the chairman this question was propounded to you, which you declined to answer:

Question. From whom did you obtain the printed copy of what purports to be the treaty spoken of by you, which you transmitted to the New York Tribune, and which you have stated you received and transmitted at or about ten o'clock p. m., of Wednesday, May 10, 1871?"

The WITNESS. I respectfully decline to answer that question, for the reason given in my answer to the first interrogatory.

The VICE-PRESIDENT. To explain to you the next question which declined to answer the Chair must read to you the question which precedes it and your answer:

By the Chairman:

“Question. The question is whether your professional honor, as you call it, would attach to illicit news for which you had paid money; would you, in such a case, feel bound not to answer a question which called for the source on the ground of professional honor?”

“Answer. That would depend on the understanding between the person from whom I received it and myself.”

The next question which you declined to answer was, “Was there any understanding upon that subject in this instance?”

The WITNESS. I decline to answer that question.

The VICE-PRESIDENT. The Chair has now read to you all the questions which you declined to answer before the committee.

[The witness resumed the seat provided for him without the bar, near the main door of the Senate Chamber.]

Mr. CARPENTER. I offer the following resolution and ask its present consideration:

Whereas, Z. L. White, appearing at the bar of the Senate in the custody of the Sergeant-at-Arms pursuant to the resolution of the Senate of the 16th of May instant, was required, by order of the Senate then made, to answer the following interrogatories:

“*First.* What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May instant?”

“*Second.* Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?”

And whereas said White was authorized by order of the Senate, on the 17th day of May instant, to answer said interrogatories in writing this day; and whereas the said White has delivered his answer in writing to said interrogatories, but shows no valid excuse for not answering the questions put to him by said special committee, and has not answered that he is ready to appear before said committee to answer all proper questions touching the disclosure mentioned in said second interrogatory; and whereas the said witness was also required by order of the Senate then made to answer certain questions which had been put to him by said committee and which he had refused to answer, as shown by the report of the committee, and has refused at the bar of the Senate to answer a portion of said questions which had been put to him by said committee; and whereas the said Z. L. White has not purged himself of the contempt wherewith he stands charged; Therefore,

Be it resolved, That the said Z. L. White be committed by the Sergeant-at-Arms to the common jail of the Territory of Columbia, to be there kept in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and appear before said committee and answer such proper questions as may be propounded to him by said committee; and for the commitment and detention of the said Z. L. White this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having said Z. L. White in custody shall be informed by said White that he is ready and willing to answer as aforesaid, it shall be the duty of such officer to deliver the said Z. L. White over to the Sergeant-at-Arms of the Senate, whose duty it shall be again to bring him before said committee; and if he shall duly answer all proper questions put to him by the said committee, said committee shall cause him to be discharged from custody; and said committee shall be continued during the recess following the present session, and are hereby authorized to sit during said recess, with all the powers conferred by the original resolution of the Senate under which said committee was appointed.

Mr. MORTON. In order to take the sense of the Senate without debate and avoid the consumption of time, I move to lay that resolution on the table.

Mr. CARPENTER. I ask for the yeas and nays on that motion.

The yeas and nays were ordered; and being taken, resulted—yeas 25, nays 35; as follows:

Yeas—Messrs. Anthony, Bayard, Blair, Cragin, Davis of West Virginia, Fenton, Gilbert, Hamilton of Maryland, Hamilton of Texas, Harlan, Kellogg, Morton, Osborn, Rice, Robertson, Saulsbury, Schurz, Sprague, Sumner, Thurman, Tipton, Vickers, West, Wilson, and Windom—25.

Nays—Messrs. Ames, Boreman, Buckingham, Caldwell, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Hill, Hitchcock, Howe, Kelly, Logan, Morrill of Maine, Morrill of Vermont, Pool, Pratt, Ramsey, Sawyer, Scott, Spencer, Stewart, Stockton, Trumbull, and Wright—35.

Absent—Messrs. Brownlow, Cameron, Corbett, Johnston, Lewis, Nye, Patterson, Pomeroy, Sherman, and Stevenson—10.

So the Senate refused to lay the resolution on the table.

Mr. SUMNER. I move that the resolution be amended by striking out all relating to the common jail, so that if the resolution passes the witness shall be committed simply to the custody of the Sergeant-at-Arms.

The VICE-PRESIDENT. The Senator from Massachusetts moves to strike out that part of the resolution which proposes a confinement in the jail of this District, and to insert confinement by the Sergeant-at-Arms of this body.

Mr. SUMNER. In support of that amendment I will say that the only precedent we have in our history known to me for this case is that of Nugent, and he was committed to the custody of the Sergeant-at-Arms. It appears from the newspapers of the time that there was a perpetual menace, as the excitement increased, that the custody should be changed to the common jail, but it does not appear that it was so changed. He continued for some two months in the custody of the Sergeant-at-Arms. We all know, also, that after the trial of impeachment a witness was taken into custody; but it was simply the custody of the Sergeant-at-Arms of the House.

There is one other precedent to which I ought to allude, and it will be for the Senate to say whether they will follow it. It is the resolution of the Senate in the spring of 1860, on the motion of Mr. Mason, chairman of the committee raised especially to persecute the supposed associates of John Brown, and taking one of them into custody, bringing him into this Chamber, propounding to him certain interrogatories which he refused to answer. Mr. Mason finally brought forward a resolution that he should be committed to the common jail. That, sir, is the precedent which it is now proposed to follow. The Senate will consider whether they will follow the lead of Mr. Mason, author of the fugitive-slave bill, chairman of the Harpers' Ferry investigating committee, and afterward a rebel, in committing a citizen to the common jail, or whether they will follow the better precedent of the Senate at a better day and under better auspices.

On this motion I ask for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 31, nays 27; as follows:

Yeas—Messrs. Anthony, Bayard, Blair, Casserly, Corbett, Cragin, Davis of West Virginia, Fenton, Gilbert, Hamilton of Maryland, Hamilton of Texas, Harlan, Hill, Kellogg, Kelly, Martin, Osborn, Pool, Rice, Robertson, Saulsbury, Schurz, Sprague, Stockton, Sumner, Thurman, Tipton, Vickers, West, Wilson, and Windom—31.

Nays—Messrs. Ames, Boreman, Buckingham, Caldwell, Carpenter, Chandler, Clayton, Conkling, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Hitchcock, Howe, Logan, Morrill of Maine, Morrill of Vermont, Pratt, Ramsey, Scott, Spencer, Stewart, Trumbull, and Wright—27.

Absent—Messrs. Brownlow, Cameron, Cole, Cooper, Johnston, Lewis, Nye, Patterson, Pomeroy, Sawyer, Sherman, and Stevenson—12.

So the amendment was agreed to.

Mr. WILSON. I move to strike out so much of the resolution as proposes to continue this special committee of investigation during the recess; and upon that motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CARPENTER. I do not intend to spend any time on this motion. Of course, if it prevails, the effect of it is to say that these men shall be discharged from custody as soon as this session adjourns, which it is supposed will probably be in about a week or ten days, and it will accomplish what my honorable and learned friend from Ohio [Mr. Thurman] yesterday said would be a shameful farce.

Mr. SUMNER. I should like to know if there is any precedent in the history of this country or any other parliamentary country for the proceedings now proposed. I am not aware of it. We have the distinct avowal that the committee is to be continued simply to continue the imprisonment of these witnesses. I think I do not err when I say this is the first time in parliamentary history that any such proposition has been made. A committee is to be kept alive merely to keep fellow-citizens in the custody of the Sergeant-at-Arms.

Mr. WILSON. In jail.

Mr. SUMNER. No; the jail is struck out; the jail is gone. That part of the resolution the Senate has rejected. I think the Senate will show equal wisdom if it refuses to adopt a proposition, absolutely without precedent, simply to keep these witnesses in custody. I am not sure that the result would follow that is contemplated. I am not sure that the presence of the committee, even unanimously, in Washington would suffice to keep those witnesses in custody. I know no authority for any such proceeding. The power may be invented. I doubt if it can be sustained by any precedent. Considering, sir, that it is absolutely without precedent, that it is contrary to reason and, I submit, also contrary to humanity and contrary to sound sense, I hope the Senate will not allow those words to continue in the resolution. Let them be dropped as "the jail" was dropped; and if these witnesses are to be taken into custody, let it be according to the familiar precedents in such cases. It is a familiar principle of parliamentary history that the power of a legislative body to commit expires with the session; and now for the first time we have a device to prolong that power. Surely, it should not be entered upon without careful consideration. I think it ought to be rejected at once.

Mr. CHANDLER. Mr. President, I hope this committee will be continued, and that it will continue its labors until it discovers who is the reporter of the executive sessions of this body. It is well known that for years there has scarcely been an utterance in executive session on this floor that has not been reported the next day in the New York newspapers. It is utterly impossible for these gentlemen to be in a position where they can hear those debates, and yet with wonderful accuracy those debates have been spread upon the newspaper press the next morning. There must be a culprit in this body, and I hope this committee will continue its investigations until the culprit is found out and brought to condign punishment, I care not who he is. Sir, there are but few men living who could report a four hours' debate from memory, and yet I have seen day after day, and week after week, the reports of executive sessions of this body spread before the country in the newspaper press. I want this investigation to go on until the reporter for the press in this body is discovered, and I hope it will go on; and let the culprit be expelled from this body, for he has no business here.

Mr. SCHURZ. The Senator from Michigan desires that the reporter of our executive proceedings, which are held here under the seal of secrecy, should be discovered by this investigation. I am very glad to hear the voice of virtue thus energetically come forth in this body; but

it so happens that we have a case under consideration here in which it is already testified that no Senator and that no officer of this body is the guilty party.

Mr. HAMLIN and others. Oh, no.

Mr. SCHURZ. Did we not hear Mr. White state just that here in open Senate?

Mr. HAMLIN. No, sir.

Mr. SCHURZ. Is not that very statement contained in the written answer which Mr. White submitted to this body to-day?

Mr. HAMLIN. No, sir.

Mr. SCHURZ. Let it be read then.

The VICE-PRESIDENT. The Secretary will report, at the request of the Senator from Missouri, that part of the answer of Mr. White bearing on this point.

The Chief Clerk read as follows:

I have already testified before the special committee of the Senate that I did not receive what purports to be a copy of the treaty of Washington from any Senator or officer of the Senate; that it was printed on folio pages, a single column on each page; and that I first saw it at or about 10 o'clock on the night of May 10th, instant."

Mr. SCHURZ. Read on.

The Chief Clerk continued the reading as follows:

I have since been informed that the copy which I thus described was not a Senate document, but was one printed by order of the State Department, of which I am also informed forty or more copies were printed for the use of the Department and for distribution. I am now ready to go before the special committee of the Senate and to testify that neither directly nor indirectly did I receive the copy of what purports to be the treaty of Washington from any Senator or officer of the Senate, nor, so far as I know, from any employé thereof.

Mr. SCHURZ. Well, sir, I ask does not the testimony given by Mr. White sustain my statement as far as it went? Mr. White explicitly testifies that he has nothing to say about the reporter of our executive proceedings, whom the Senator from Michigan insists upon discovering; and when I see this sudden explosion of virtue, which now demands at the hand of a newspaper reporter disclosures about the man who betrays the secret of our executive session in a case where the betrayal did not come from a Senator nor from an officer of the Senate, I am bound to conclude that such virtue is a mighty cheap article in this instance.

Mr. President, let us consider for one moment the situation in which the gentlemen are placed who are now at the bar of the Senate. I have no doubt that the proceedings which are proposed to us are within the power of this body; I have no doubt that we have a right to do what the committee desires us to do; but the question with me is whether it is also our duty to do so. What are these gentlemen charged with? They received a copy of a treaty which was communicated to the Senate in confidence, and they secured its publication. That treaty, however, was not communicated to the Senate alone in confidence, but to a good many other persons outside of this body. It had passed through the hands of many, high and low, before it reached these Halls. Thus even without the testimony of Mr. White it would be perfectly clear that, although it might indeed have come into Mr. White's hands from a Senator, yet there is a strong possibility that it might also have come there from somebody else.

Let me state the circumstances of the case further. A synopsis of that treaty was published, as is generally asserted, and has never been denied, by the authority of the State Department, which makes it evident that the executive branch of this Government had not only no

objection to the publication of this document, but even desired it. From this I draw the conclusion that in the opinion of the executive department of the Government no danger at all could result to the peace and to the best interests of this country from its publication. As far as that is concerned, therefore, the transaction of which Mr. White is guilty is absolutely harmless, as testified to by authority of high standing.

Still, I shall not deny that his refusal to testify as to the source from which he obtained his information may not be looked upon in the same light. But can we fail to see the mitigating circumstances surrounding such an offense? Mr. White, in his answer, gave us his conception of his professional duties as a newspaper correspondent. When you look at it impartially, do you not find it to be true that a member of the press gathering news frequently obtains that information under the seal of personal confidence, and when you bring him up before a committee and endeavor to force him to disclose the source of his information that he stands there between two conflicting duties weighing upon his mind with equal weight? On the one hand, he has given his word of honor as a gentleman not to reveal a secret; on the other hand, he is required, as a witness, by a Congressional committee, to reveal it. Is it strange, is it absolutely bad, in a moral point of view, that he should debate within himself whether the revelation is of such necessity to the welfare of his country that he should throw overboard all those other obligations of honor into which he has entered in obtaining his information? Can you not imagine many instances in which a man of honor would find it extremely difficult, nay, impossible, to do such a thing?

Why, sir, this very morning I was told by a journalist engaged in the collection of news in the city of Washington that not very long ago he had received certain information from a member of the executive branch of this Government with the expressed desire that it should be published; that he was brought up before a legislative committee to reveal the source from which he had derived that information, but that having promised not to do so, in his conscience he could find no warrant for that revelation. I ask, gentlemen, how could he possibly have violated the confidence reposed in him? There he stood between two duties. You may say that his refusal to fulfill either might render him guilty of a grave offense; but is it not after all natural that the duty of personal honor should weigh heavily within him, and that he, thus unhappily situated, should rather have our sympathy than our condemnation?

Mr. MORRILL, of Maine. Will the Senator allow me to ask him a question?

Mr. SCHURZ. Yes, sir.

Mr. MORRILL, of Maine. I ask the Senator whether in his judgment this gentleman's sense of professional honor should be higher than his obligation to the law?

Mr. SCHURZ. What law, I should like to ask in the first place?

Mr. MORRILL, of Maine. The law which obliges him to answer the questions propounded to him.

Mr. SCHURZ. The gentleman at the bar of the Senate has stated already that he considers himself under the same obligation under which a physician or a clergyman or an attorney would consider himself.

Mr. MORRILL, of Maine. I ask the Senator whether he considers it so?

Mr. SCHURZ. In answer to the Senator from Maine I will repeat

what I have stated, that here there is one of those grave conflicts of duty perplexing to the conscience of any man, for he is in danger of going wrong whichever way he goes. I do not know whether the Senator from Maine has ever been in any such conflict, but certainly, when he looks at it fairly, he can not deny that such conflicts sometimes do exist, and that it is extremely difficult for the most conscientious man to decide in which direction the voice of honor or the voice of duty calls him.

The expression "honor among thieves" has been used here in connection with this case. The example of the Ku Klux Klan has been raised up before our eyes. Why, gentlemen, do you not all feel, whatever you may say, that the members of the press, the journalists around us, by whatever means they may obtain their information, are neither thieves nor members of any organization of dishonorable tendencies? There is not a single accuser of Mr. White on this floor to-day who would not to-morrow associate with him as a gentleman. You all feel the difference, however nice the parallels may be that you run—you all know the moral difference. Why, then, indulge in such wild talk at all?

No, sir; I think that in a case like this, where there are perplexing conflicts of duties, one of which of a professional character, where the voice of duty and honor is heard calling in two divergent directions, the consideration of the Senate should certainly be given to the peculiarities of the case, that the most lenient course should be followed instead of the severest, and that, by adopting the amendment now before us, we should keep within time-honored precedents, especially when we can foresee that a departure from them in the direction of severity will be of no avail at all.

I think the Senator from Ohio [Mr. Thurman] spoke a very wise word yesterday when he was asked a question about the law, and he said he considered it a good law not to do a foolish thing in such a case as this; and that is my opinion. I desire to assert the dignity of the Senate as strenuously as any member of this body; but, gentlemen, I find no such assertion in this proceeding. If we had indications pointing to a Senator, or an officer of the Senate, it might be different; but having indications pointing just in the other direction, what will the impartial world say? In hundreds and hundreds of cases where the secret proceedings of our executive sessions have been revealed, and where all the circumstances indicated that the information must have come from some member or officer of this body, the Senate did not raise a hand; but when a case occurs where all the probabilities are that no man connected with the Senate, but some outsider, is the guilty party, then to throw up our hands in horror, and thus trying to set an example of exalted virtue, that is not the way to vindicate our honor.

Mr. HAMLIN. I wish to submit a question to my friend from Missouri. I want to know if he is not himself possessed of that information which leads him reasonably and almost certainly to believe that if these questions are required to be answered, and the thing is traced, it will be brought home to the Senate?

Mr. SCHURZ. I am not.

Mr. HAMLIN. Then the Senator has less information than many other Senators, I think.

Mr. LOGAN. Mr. President, in hearing the arguments of different Senators in reference to the question before the Senate I have been somewhat surprised. It is not a question as to whether the two gentlemen who are present here as witnesses have committed an offense by transmitting for publication that which purported to be a treaty between two

governments, for they have committed no offense in that respect; but it is whether or not they are guilty of an offense toward the Senate by refusing to answer a legal and proper question which was asked them by a committee of the Senate. In listening to the argument as to the manner in which the Senate shall deal with this case I am reminded of the action of a county court on one occasion that I have heard of. You appoint a committee to do what? To investigate a subject over which you certainly have jurisdiction. You give that committee full authority to investigate it, and to ascertain a fact. What fact? As to who revealed the secrets of the Senate. That is the fact you desire to ascertain.

In order that they may ascertain that fact, you first give them the authority and you must then sustain them in enforcing that authority. They ask a question of a witness which he refuses to answer. He is then brought to the bar of the Senate, and the witness says to the Senate that he declines to answer the question; why? For some reasons that he has which are not good reasons in the judgment of the Senate. He declines to give the information. What does the Senate do? The Senate then decline to enforce the authority which they have conferred on the committee to ascertain a fact; they decline to punish for the refusal on the part of this witness to testify to a fact. As I said, it reminded me of what occurred in a county court once. A gentleman came forward and asked that he might have a ferry across a river and a road to it. The court decided that he should have the ferry but should not have the road. [Laughter.] And so in this case you decide that this committee shall investigate this question, but when you bring the witnesses before you, who refuse and tell you that they decline to answer the questions put by the committee, you decide that they shall not be punished for that refusal. Hence you take out of the committee the power to enforce that which you yourselves voted should be enforced, the answer to certain questions.

This is establishing a precedent. I have no feeling, so far as I am concerned, against these gentlemen, or against any others who may be supposed to be instrumental in such publications. I was not here when the resolution passed ordering the investigation. I do not know whether I should have voted for it or not if I had been here; but coming here with the resolution of the Senate in force authorizing this committee to investigate this matter, it then, in my judgment, becomes my duty as a Senator to sustain the committee until they do ascertain the fact that the Senate has required that they shall ascertain.

Now, what is the precedent that you are establishing? A witness comes before a committee and refuses to answer a proper question. What is it? From whom he obtained a copy, or pretended copy, of this treaty. He says, "I did not obtain it from a Senator, nor did I obtain it from an officer or employé of the Senate;" and there you stop. Now, let me put a case to the Senate. Suppose a charge of corruption was presented to the Senate against a Government officer, no matter whom, and you, as a court, had him before you trying him on articles of impeachment. A witness comes forward and testifies that he paid money to a certain person. You ask him, "Who was that person?" "I decline to answer. I will say I did not pay it to the court; I did not bribe the court. I did not pay the money to any of the court; nor did I pay it to the clerk; nor did I pay it to any party connected with the court; but I decline to answer to whom I did pay it." I should like to know how you could go along with the impeachment of that officer. How much further could you advance? Why, sir, the wheels of jus-

tice might be clogged every day in that way. You never could investigate a case.

Suppose you had the case of a charge of corruption against a Senator. I hope no such thing will ever occur; but suppose a charge of bribery were made against one of your honorable body, and a committee were investigating the facts under a resolution of the Senate requiring that committee to inquire and ascertain whether money had been paid for a vote, or for anything, no matter what. A man comes up before the committee and he is asked, "Did you ever pay any money?" "Yes." "How much?" "Ten thousand dollars." "To whom did you pay it?" "I decline to answer that question. I will answer, however, that I did not pay it to a Senator; I did not pay it to the Sergeant-at-Arms; I did not pay it to an officer of the Senate or any employé of the Senate." And there you stop and say, "That answers the question; that excludes the idea that any Senator received the money." But if he answers to whom he did pay it, perhaps you can obtain from that person some fact which may connect somebody with this corrupt transaction. And yet here the Senate, a majority of them lawyers, sit here to-day and are willing to decide that no punishment except putting a man in a room, perhaps to be feasted and dined every day until this session shall end, is to be applied for a contempt of the Senate in refusing to answer a proper question.

Sir, if this is what the Senate intends to do, the best thing you can do is to lay the whole proceeding on the table and stop this farce; for then it is a farce and nothing but a farce. I have seen a farce of this kind enacted once before. A man was brought before the House of Representatives who had refused to answer a question, a proper question, put by a committee of the House. The House was very brave for a day or two until the newspapers commenced attacking the House. They were going to put him in jail and keep him there for a six or a twelve month. They did confine him finally in a room. There he was feasted day after day; fine dinners were sent to him, and the whole country was laughing at the House of Representatives, and not until they finally determined to perform their duty did they ever get a word out of that witness.

Whether these witnesses may ever answer or not is not the question before us. That question, in my judgment, is whether the Senate will place themselves in a position where they may hereafter procure evidence for the purpose of putting down corruption or wrong, for the purpose of ascertaining who has divulged the secrets of the Senate or anything else. So far as the secrecy of the Senate is concerned, I would vote to-morrow to open the doors of this Senate for nearly all purposes; but that is not the question before the Senate now. The doors have not been opened for this purpose; and you are trying to ascertain whether or not you have some one here who is unfaithful to his brother Senators. That is what you desire to ascertain; and if you intend to establish precedents by which you will be governed hereafter and produce good results, you must have nerve enough to enforce your own rules and enforce the law. What general ever won a battle that ran when the battle was half over? What man ever won a fight that became a coward before he got through with it? No man ever did, and no man ever will. Is a Senator who voted for the resolution ordering this investigation afraid to-day in this hall to vote to punish men for refusing to comply with the rules of the Senate and the laws of this land? What did you intend when you passed the resolution? Did you intend to have these questions answered? If you did, then do

that act which will produce the answer. If you did not, lay the whole matter on the table and quit, and laugh at one another instead of letting the country laugh at us.

I voted against striking out the word "jail," not because I want to see a citizen in jail, not because I want to see a man punished, but because it is my duty to stand by the committee while they are performing their duty. I have been on committees of investigation, and once or twice I have felt chagrin and mortification at the House backing down from me after they had voted certain things and preventing me from procuring the very testimony that I could possibly procure if I had been sustained.

It has been said here that this is the punishment of a citizen. I agree with my two friends from Massachusetts that it is a hard thing to punish a citizen. But, sir, when you use the term "citizen" in connection with punishment you must remember that he is not being punished because he is a citizen, but because as a citizen he does not perform the duty of a citizen toward the laws of the land. I know there is an idea that pervades in the minds of some men that there is only a moral obligation between us here that we shall not disclose what may transpire as to certain matters; but while that moral obligation exists between us there is a legal obligation upon every citizen of the United States to obey the law if he receives the protection of the Government. If you allow men who claim that a moral obligation exists between them and their confederates to carry it out against the law, if you permit an agreement that they have made between themselves to override the obligation of a citizen to the laws of his country, then you say that a mere agreement between any two men to refuse to state a fact that possibly might save your country or that might perhaps expose perfidy and corruption to the world shall override the legal obligation binding on the citizen. Sir, that is not the true rule, and the man who enunciates that doctrine as the rule to govern the Senate or any other body enunciates a doctrine that is destructive of the fundamental principles of any government that expects to be held together by obedience to its laws.

* * * * *

Mr. THURMAN. Mr. President, the immediate question before the Senate is, shall the clause continuing the powers of this committee after the close of the session be stricken out of the resolution? That is a most important question, and carries with it very important consequences. If those words be stricken out of the resolution, then the imprisonment of the persons at the bar can not continue longer than the session. If they be retained, then that imprisonment may continue for an indefinite period. Another inconvenience I see is this: if the powers of the committee be continued, I do not presume that the committee will continue in permanent session in the city of Washington. The committee is composed of Senators, living, the most of them, far distant from this city. At the close of the session I presume they will return to their homes. In the meantime these individuals will be in imprisonment here, and however willing they may be to testify and to answer fully the questions that have been propounded to them, they can not be discharged from imprisonment until their wishes can be made known to the members of the committee and the committee can be assembled here, if the resolution be passed in the form offered by the Senator from Wisconsin. It is a very grave and serious matter, therefore, whether this proposition to continue the committee in existence shall be adopted by the Senate or not.

I intend to vote for the motion made by the Senator from Massachusetts to strike out that part of the resolution, but I do not mean to vote for it upon any false grounds; I do not mean to vote for it upon any erroneous notion of the law.

I said on a previous occasion that the imprisonment of these persons might be prolonged by prolonging the existence of the committee and authorizing it to sit in vacation. I said yesterday that that opinion which I had expressed had been questioned by one for whose opinions on questions of parliamentary law I had great respect, and therefore I would not affirm it yesterday. Since then I have reflected upon it a good deal and have investigated the law as fully as I have been able to do, and the result is that I am perfectly satisfied of the correctness of the opinion as I first expressed it. I do not doubt the power of the Senate to authorize this committee to sit in the vacation, nor do I doubt the power of the Senate to hold these persons now at the bar in custody until they answer those questions. That is the reason of the thing, and that is the current of the authorities.

Let us see as to the reason of the thing. The object is to get the testimony. The imprisonment is a means to procure the testimony; and just so long as the tribunal lasts which is charged with the duty of acquiring that testimony, just so long may the means be resorted to. That is a general principle. If a court is trying a cause and a witness refuses to answer, no one has ever disputed that so long as the court was sitting trying that cause the contumacious witness might be imprisoned, unless he should answer, until he had answered or until there was an end of the cause. No one doubts, either, the power of the Senate to appoint a committee to sit in the recess of the Senate or to extend the powers of a committee to sit in the recess of the Senate. We have done it again and again. We have two or three committees now authorized to sit in the recess of the Senate, and just so long as this committee shall sit, whether it be during the session of the Senate or whether it be in the recess of the Senate, just so long will this trial be going on, just so long will the investigation with which the committee is charged continue, and the tribunal to make the investigation continue; and, therefore, just that long may the witness be kept in custody if he will not answer a proper question that has been put to him.

There is a distinction, as I said yesterday, between a confinement to compel a man to testify and an imprisonment by way of punishment. That is very clearly recognized in a case to which I will call the attention of the Senate, the case of *The United States v. Williamson*, in which the court say:

Commitments for contempt, like the contempts themselves, may be properly distributed into two classes: either they are punishment for an act of misconduct, or it is their object to enforce the performance of a duty.

Those are the two classes. The one is where an act of misconduct has been committed, and the imprisonment is simply punishment for that act; the other is where the object of the imprisonment is to enforce the performance of a duty, as, for instance, the duty of testifying, the duty of answering the proper questions. Now, what is the duration of the imprisonment?

The confinement in the one case is for a fixed time, supposed to be commensurate with the offending.

That is, if an offense has been committed and you propose to punish for that, you can not imprison indefinitely; you must imprison for a

fixed time, because every punishment must be fixed and certain. But how is it in the other case, where the object is to compel the performance of a duty?

The confinement in the one case is for a fixed time, supposed to be commensurate with the offending; in the other, it is without prescribed limitation and is determined by the willingness of the party to submit himself to the law.

There is a plain statement of it. That is in accordance with common sense. We must not confound this with the parliamentary law that prevails in Great Britain. In Great Britain, in cases in which there is no statute regulating the matter as here, the House of Commons or the House of Lords, in imprisoning a person, imprisons him both to compel the performance of his duty and also as punishment; and hence in the British Parliament, if a witness refuses to answer a question put to him at the bar of either House, or put to him by a committee of either House, the imprisonment may be not simply until he answers, but they proceed to punish him, if they see fit to do it, by confining him even after he has answered, as punishment. But here we ought to do no such thing as that, for the reason I stated yesterday. We ought to do no such thing as that, because we have made his refusal to answer an indictable offense, triable in a court of justice; and so far, therefore, as punishment is concerned we have remitted it to the courts.

I do not moot the question whether or not it is competent for Congress to take from the Senate its inherent power to punish for contempt. My own impression is that it can do so to the extent that this act proceeds. I do not say that it can do so in all cases. I do not say that Congress, by passing an act that if a man should commit an assault and battery on the floor of the Senate he should be liable to indictment and punishment, would thereby take from us the right to punish for that contempt committed before our faces and in the Senate Chamber. I do not think it would. We have statutes that punish assaults and batteries. They do not take from us the power to punish the contempt committed by an assault and battery on this floor in the face of the Senate.

But in a case like this, where the whole object is to acquire testimony, where the offense is not accompanied by violence, where there is no disturbance of the public peace, no interruption of the business of the Government, no indignity offered to any Senator, where the whole thing is simply the acquisition of testimony that the Senate considers necessary, when we have passed a statute that confers jurisdiction on the courts to try and punish a witness who refuses to answer, it does seem to me that the whole subject of punishment for that offense is remitted to the courts and may properly be remitted to the courts, and that leaves us simply with the power to compel, in the language of the court which I have read from Williamson's case, the performance of a duty; that is, to compel the witness to answer, and hence can exist no longer than the refusal to answer continues; but it may exist just so long as that refusal to answer does continue and the committee has life and existence to receive the answer. I can not, therefore, agree with the suggestion thrown out by the Senator from Massachusetts who made this motion [Mr. SUMNER], that there is no authority to continue this imprisonment beyond this session. I want the Senate to meet the question fairly, with a full knowledge of its powers and a full knowledge of the consequences.

Why, then, is it, entertaining these views, that I am willing to support the amendment offered by the Senator from Massachusetts? I am

willing to do it upon nigher considerations. In every case of this kind it is for the Senate to decide at every step whether it will take another step. It is for the Senate to decide in its own good judgment whether the case is one that requires the utmost extremity of the law, or whether it is one which the public interests do not require shall be prosecuted any further. That must be the question always. If a man were brought up here a prisoner at this bar in such a feeble state of health that imprisonment might be the means of destroying his life, even though he were a contumacious witness, there is not a Senator on this floor who would consign him to an indefinite imprisonment. We take into consideration the circumstances.

So, too, if the occasion does not require extraordinary remedies, if the occasion does not require the exercise of our extraordinary powers, we ought not to exercise them; and it is upon this ground alone, that this case does not require the exercise of the extraordinary powers which are vested in the Senate, that no good can come out of it, that the play is not worth the candle—it is for that reason, and that reason alone, that I am willing to see this thing brought to an end. I do not consider that I am sacrificing the dignity of the Senate; I do not consider that I am abnegating any right that belongs to the Senate. I do not think there is anything of that kind here; but, in my judgment, this thing has gone as far as there is any necessity for it to go; and when I say “this thing,” I am not speaking about the investigation, but I am speaking about the prosecution of these contumacious witnesses.

Now, sir, in what spirit ought we to enter upon the inquiry whether we shall proceed to exercise the utmost powers vested in the Senate to procure the answers from these witnesses? I think that that was very well expressed in the British Parliament a long time ago. There are two very remarkable cases in the British Parliament on this subject of contumacious witnesses; and I beg leave to read a short statement of them from Cushing’s Parliamentary Law:

When a witness refuses to answer the questions which he is directed to answer, or to produce a paper or other document, the proceeding against him is intended not only as a punishment for his contempt, but also to compel him to obey the order.

There, as I said, imprisonment is resorted to both as a punishment and as a means of compelling the witness to obey the order. I have shown why that is not so in this case in the Senate of the United States:

For these purposes a contumacious witness is usually committed, in the first instance, to the custody of the sergeant-at-arms. If this fails to induce him to submit himself to the order, he may then be committed to Newgate, or some other public prison.

I beg the Senate to observe how careful of the liberty of an Englishman the English Parliament is in its practice. It does not send the man first to the common jail, but it first puts him into the custody of the sergeant-at-arms of the House, and if that does not produce the effect, then it proceeds to the more degrading punishment of imprisonment in Newgate, or some other common jail.

Instances have occurred in which the confinement of a witness has been accompanied with circumstances of severity, intended to bring him to submission, as, for example, in the year 1742, in the case of Nicholas Paxton, who, for refusing to answer the questions put to him by the secret committee to inquire into the conduct of the Earl of Oxford, was, in the first place, committed to the custody of the sergeant-at-arms and debarred the use of paper, pen, and ink; and, persisting in his refusal, was then committed a close prisoner to Newgate, the House at the same time ordering that he be not allowed pen, ink, or paper; that no person be permitted to have access to him without leave of the House; that his wife have leave to remain

with him during the time of his confinement, but that she be not allowed pen, ink, or paper; and that no person have access to her without leave of the House. In this case the severity with which Paxton was treated proved ineffectual, and the House, finding it impossible to compel him, with some others, to answer, resorted to the expedient of passing a bill of indemnity; but this being rejected by the House of Lords, the inquiry was, of course, defeated.

A very instructive lesson that teaches us!

Other instances of the same kind occur in the journals. In the year 1809, on the occasion of the inquiry with reference to the conduct of the Duke of York, it being proposed to commit one of the witnesses (Mrs. Clarke) to the custody of the sergeant-at-arms, with orders to deny her access to any person whatever, Mr. Speaker said—

And it is for this remark of his mainly that I refer to this authority, because it seems to me that it indicates the true spirit in which this inquiry should be made—

Mr. Speaker said, “The House ought to pause, before they come to a decision upon a point in which the liberty of the subject was so materially concerned.

That was the remark of the Speaker. The writer goes on—

There seems to be no reason to doubt that the House may put a contumacious witness into close confinement, and this in fact was all that was done in Paxton's and other cases of the same kind, accompanied with such restraints from communication with other persons as it may deem necessary to prevent the ends of public justice from being frustrated; but whether this right should be exercised or not in any given case is a question deserving of very grave and careful consideration.

Now, Mr. President, that lays down the right rule. It does not follow as a matter of course that because a witness is contumacious you shall exhaust your power; that you shall imprison him indefinitely; that you shall debar him from the use of pen, ink, and paper; that you shall shut him up in solitary confinement, and allow him to see no human face. It does not follow that because you may do that you ought to do it. We are not solving a mathematical problem; we are not finding that if such and such elements are in the problem the only thing that can follow is a certain conclusion. It is a matter within our discretion, and that discretion is to be exercised in view of all the circumstances; and it is because in view of all the circumstances here I do not think that this power of the Senate should be exercised to its ultimate degree that I am willing to vote for the amendment offered by the Senator from Massachusetts.

And I am the more willing to do this, Mr. President, because I believe it is perfectly within the power of this committee to get at the offender. It seems to be settled that this is a State Department copy. Whether it came from a Senator or not does not appear. There is not a particle of evidence before us to indicate from whom it came, but it was a State Department copy. That is clear. Now, I understand that the Assistant Secretary of State has furnished the committee with information which shows exactly how many copies were printed for the State Department of the first edition of the treaty, how many copies of the revised edition. He has communicated to the committee precisely the number; and by a comparison of the treaty as published in the Tribune with the treaty as published by the State Department it is ascertained precisely whether it was one of the first copies printed by the Department, or whether it was a revised copy. Which it was I do not recollect, but I believe it was the revised copy. I understand further that he has furnished the committee with information as to exactly how many copies of that revised edition were furnished, and precisely into whose hands they went.

So far as the Senate is concerned, our inquiry now being limited to

Senators, he has furnished the committee with the names of the Senators who received copies from the State Department. What is to prevent those Senators from being summoned before the committee and compelled to testify what they did with their copies? And is it not right, when we are investigating the conduct of Senators, to begin at home and summon those Senators before the committee?

Put them under oath if you see fit to put them under oath, though that is not the custom of the Senate; put them under oath if you see fit, and make them tell where their copies were from the time they received them until this hour, and I think you will get on the track of this lost Pleiad. I think you will find where it is.

It seems to me, Mr. President, that when the committee has that within its power, when it has its witnesses right within this Senate Hall, it ought to exert that means, it ought to exhaust those powers, before we resort to the last reason of the law—the indefinite imprisonment of a citizen.

I believe this is all I need now say on that subject. There are, however, one or two things which have been said in this debate, for it has taken a much wider range than the question before the Senate, which ought, perhaps, to be noticed.

The Senator from Massachusetts [Mr. WILSON], who, in the language of the Senator from Michigan [Mr. CHANDLER], “made a clean breast of it,” told us that he had been sixteen years in the Senate and that debates of the Senate in secret session leaked out continually. But the Senator forgot, notwithstanding he had been sixteen years in the Senate, how different the former rule was from the present rule of the Senate, and that debates might get out, and get out legitimately, before the adoption of the present rule. There were only two rules in regard to secrecy up to the adoption of the present rule. The present rule was adopted in its present form only three years ago, March 25, 1868. There were two old rules, the thirty-eighth and thirty-ninth. The thirty-eighth rule read as follows:

All confidential communications made by the President of the United States to the Senate shall be by the members thereof kept secret—

That is, the communication should be kept secret—

and all treaties which may be laid before the Senate shall also be kept secret until the Senate shall, by their resolution, take off the injunction of secrecy.

That is, the treaty should be kept secret. That rule required secrecy in reference to nothing but the communication, if it was a communication sent in executive session, or a treaty; it did not prohibit a statement of a debate; and so far from prohibiting it, Senators constantly said what took place in debate and published their own speeches if they saw fit to publish them. We recollect very well the case of Col. Benton publishing his speech. That was only one out of many cases of speeches published by Senators which had been made in secret session upon treaties, because there was no rule to prohibit it. And Senators will probably recollect that when the question about the secrecy required by the present rule was mooted in the Senate in March, 1869, as late as that Mr. Fessenden, of Maine, said, “I will tell how I voted on this question.” That was because he had the old rule in his mind; but when his attention was called to the new rule he at once said, “Certainly, I shall do no such thing.” Up to 1868 there was no rule of this body that prohibited the disclosure of the remarks of any Senator upon a treaty.

Then, what was the other rule as to secrecy? It was the thirty-ninth rule:

All information or remarks touching or concerning the character or qualifications of any person nominated by the President for office shall be kept secret.

There was the whole length and breadth of your rule of secrecy before 1868. You could not communicate a treaty, you could not communicate a communication made by the President, and you could not communicate remarks touching the qualifications or character of a nominee for office; but with these limitations upon your right you had a right to speak of anything that occurred in the secret session. That being the case, it is easy enough to understand how, for the first thirteen years of service of my friend, the Senator from Massachusetts, the debates of the Senate in secret session got out. But now the rule is entirely different. The rule that now obtains in the Senate, adopted March 25, 1868, reads in this way:

39. All confidential communications made by the President of the United States to the Senate shall be, by the Senators and the officers of the Senate, kept secret; and all treaties which may be laid before the Senate, and all remarks and proceedings thereon, shall also be kept secret until the Senate shall by their resolution take off the injunction of secrecy.

That prevents you from telling what is said on any treaty, and that prevents you also from telling what was done upon any treaty until the injunction of secrecy is removed. You can not tell how the vote was upon any treaty; you have no right to tell how you voted yourself upon any treaty, and, of course, not how any other person voted, for the vote is the most important proceeding on a treaty. You have no right to say anything at all about it. In a word, your mouth is sealed in respect to the consideration of a treaty until the Senate sees fit to take the seal off. That is the present rule.

The fortieth rule is the rule in regard to nominations:

40. All information or remarks concerning the character or qualifications of any person nominated by the President to office shall be kept secret.

That is exactly the same as the old rule in regard to that—

but the fact that the nomination has been made shall not be regarded as a secret.

One of the Senators referred to the fact that nominations were known even before they reached the Senate. There is no law that makes them secret; there is nothing to prevent the President from giving a list of them to anybody he pleases. There is nothing which prohibits a Senator from saying that such or such a nomination has been made. That is expressly reserved.

Mr. MORTON. Nominations are given from the Executive Department to the public as soon as they are made.

Mr. THURMAN. Certainly, they are given to the press, and there is no injunction of secrecy in respect to a nomination at all. It would be of the very worst public policy that there should be. It ought to be known that a nomination is made, so that the public, knowing that nomination, may inform Senators in respect to the qualifications or character of the nominee. Public policy requires that nominations should be known, and hence the Senate has wisely excepted the fact of a nomination from the general rule imposing secrecy on the Senate. Remarks that are made on the subject of the qualifications or character of a man nominated can not be revealed; but that does not extend to revealing the fact that the Senate had such a nomination under consideration. It is no breach of privilege for any Senator or any officer of the Senate to tell anybody that the Senate to-day was considering the nomination of A. B. for office, provided he does not tell what was said, provided he does not state what was done, provided he says nothing of

the remarks that were made touching the qualifications or character of the nominee. He may tell that the Senate had under consideration this nomination, or that nomination, or the other nomination, but he can not tell what was said in respect to the character or qualifications of the nominee.

It is from not looking into these rules and seeing precisely what they enjoin and what they forbid that many persons are led into the supposition that Senators, in slang language, are "leaky," when in point of truth they are violating no rule of the Senate at all.

Mr. President, there is one other thing that has been said upon which I wish to make a remark, although it is almost a repetition of what I said yesterday. It is said that there is no moral obligation resting upon anybody to keep a treaty secret apart from the legal obligation that rests on the Senate and its officers. I said yesterday, and I repeat to-day, that I do not subscribe to that doctrine. If it is right in the Constitution to give us the power to consider a treaty in secret, and if it is our duty, in our judgment, to so consider it, I do say that every law-abiding man is under a moral obligation to let that provision of the Constitution and the judgment of the Senate have effect.

Mr. SUMNER. Is there any provision of the Constitution with reference to secrecy?

Mr. THURMAN. The Senator will not deny that the clause of the Constitution giving us power to make rules and regulations——

Mr. SUMNER. That is clear, but——

Mr. THURMAN. And the Senator has forgotten, too, the clause read yesterday by the Senator from Wisconsin [Mr. CARPENTER].

Mr. CARPENTER. That each House shall keep a journal of its proceedings, except such matters as in its judgment ought to be kept secret.

Mr. SUMNER. Yes.

Mr. THURMAN. That is an express recognition of our right, and certainly no one will deny it.

Mr. CARPENTER. And of our duty, I submit, as to any matter that we think ought to be kept secret.

Mr. THURMAN. Certainly it is, and it is the duty of every good citizen to obey our judgment in that respect as much as it is his duty to obey the law of the land which we pass; and if there is a moral duty to obey a law there is a moral duty to obey the injunction of secrecy which we impose. I have no sympathy, therefore, with anybody who by surreptitious means procures a treaty that is being considered in secret by the Senate. I think it sets a bad example, and no consideration whatsoever of his power or his influence in the country can compel me to say that his act is right; and yet it is true, as I said yesterday, that if there ever was a case in which the act was venial, this is that case. If this injunction rested upon these men not to obtain this treaty, it rested equally upon the Secretary of State; and he ought not, until he knew whether the Senate wished to consider this treaty in secrecy, to have published an official or a semi-official synopsis of it; and if, therefore, they have been guilty of an offense against good morals in this case, the Secretary of the State is equally guilty with them.

Now, sir, I do not say that in this case this was not a venial offense on all sides; and yet I do think it would have been much more proper for the Secretary of State to have withheld his official or semi-official synopsis of the document until he saw what was the judgment of the Senate, who were to consider it, and upon whom rested the duty of determining whether it should be secret or whether it should be public.

I think he should have waited until we determined that question, without attempting to forestall us and giving the treaty in substance to the public. After he has done it; after the head of the Department of State has done it, and it must be presumed with the approbation of the President of the United States, for certainly no Secretary would dare to take so important a step without the authority of the President, after the Executive Department has thus published the whole substance of this treaty in a semi-official organ of the Administration in the city of Washington, and given it to the press, I do say that the idea of moral offense on the part of these gentlemen of the press does fade into exceedingly thin air.

Sir, once more reminding the Senate that every step in this case is to be decided by the circumstances at the time; that we are not, as a matter of course, because we have a contumacious witness, to proceed against him to the extremity of the law, but we are to determine at each step that is proposed whether we will take that step; I do say that under the circumstances I have detailed to the Senate it does seem to me that neither our honor, nor our dignity, nor public justice, nor the public interests require that we should inflict upon these men an indefinite imprisonment.

Mr. SCOTT. Mr. President, as the amendment of the Senator from Massachusetts [Mr. SUMNER] proposes virtually to deprive the committee of the power of pursuing this investigation after the close of the session I will say a few words, and they shall be very few, upon the real question which is involved in that motion.

The circumstances surrounding the case, to which the Senator from Ohio [Mr. THURMAN] has adverted, are too apt to create the impression upon the mind here, and will perhaps be too apt to create the impression of the public mind, that these proceedings are for the purpose of punishing these witnesses, not for the contempt, but for the publication of this treaty. It has already been said in the Senate, and it can not be too strongly impressed upon the public mind, that this proceeding is not for the purpose of punishing anybody for the publication of this treaty. If that be an offense it is one for which we have provided no punishment so far as these witnesses are concerned, and it is out of the power of the Senate to punish these witnesses for the publication of that treaty. That alone ought to disabuse every man's mind of the idea that punishment for the publication of the treaty has anything to do with these proceedings. Although the Constitution does authorize the Senate to declare what part of its proceedings shall be kept secret, Congress has never seen proper, in the exercise of its discretion, to provide any legal penalty upon any one not connected with the Senate for the violation of that rule. We have no authority over anybody else. So that the question is not, was it a venial offense, or was it a highly criminal offense, in these witnesses to publish the treaty? If that were the only question here I suppose we should not have delayed for a moment the more important business of this session and taken up so much time in the consideration of the question which is before us. I will not state it as a fact, but I certainly do state it as an opinion, and one which I think will find no dissent in this body, that the surreptitious publication of this treaty is the only reason why the whole treaty and the protocols have not long since been given to the country by the authority of the Senate.

Now, sir, what is the real offense? The real offense is the refusal of these witnesses to testify before a committee of the body raised for the purpose of ascertaining, in the present form before us, whether any

member of this body or any employé or officer of the Senate over whom we have jurisdiction did communicate this treaty to these witnesses or to anybody else. That is the real question ; and two misconceptions, I think, have been made in the minds of Senators here with reference to the present aspect of the case. One misconception is that the answer of the witness now before the Senate has already exonerated every Senator and every member of the Senate from blame in this matter ; and the other misconception is, as I gather from the speech of the Senator from Missouri [Mr. SCHRUZ], that this witness does to some extent, occupy a position, in consequence of his professional relation, analogous to that of a lawyer or a physician or a clergyman who has received the confession of a dying man. Permit me, sir, to say a few words as to each of these two points.

I do not conceive that this answer does exonerate every member of the Senate from blame as to how this treaty was made public ; and it is for this reason, I wish to say here, that I have voted throughout upon this case, as I have no doubt every Senator has voted this morning, against laying the resolution on the table and for the imprisonment of these witnesses because they have not answered these questions before the committee. It has been with pain that every member of the Senate who has so voted has, in obedience to a public duty, voted contrary to what his own personal kind feeling toward these witnesses would have impelled him to vote. Now, sir, does this answer exonerate every Senator ?

I have already testified before the special committee of the Senate that I did not receive what purports to be a copy of the treaty of Washington from any Senator or officer of the Senate ; that it was printed on folio pages, a single column on each page ; and that I first saw it about ten o'clock on the night of May 10, instant. I have since been informed that the copy which I thus described was not a Senate document, but one printed by order of the State Department, of which I am also informed forty or more copies were printed for the use of the Department and for distribution.

It may fairly be argued, I think irresistibly argued, that the copy which came into the hands of the witness was a State Department copy. The circumstances clearly show that ; but do the circumstances show that that State Department copy, coming into his hands at an hour after the time when the treaty had been communicated to the Senate, was not communicated to him, either directly or indirectly, through a Senator ; and I care not here to enter into the discussion of whether the communication of that copy or any other copy would be a violation of the duty of a Senator. It is the substance, as the Senator from Wisconsin said, of what is before us that is to be kept secret, not the identical paper which is communicated to us ; and I care not to argue that question. So that all that can be said about that branch of the answer is, that it is entirely clear that it was a State Department copy that came into the hands of this witness. This might narrow the field of investigation, it is true, but it would be no justification for pursuing such a course as is suggested by the Senator from Ohio.

The fact that this shows that you may get at a limited number of witnesses and bring them before the committee, who might trace that particular copy, would be the worst reason in the world for discharging the witnesses whom you have before you, undertaking to trace this subject to anybody. If the Senator from Ohio were in his place I would say to him that, knowing that he has occupied a judicial position, there could be nothing else than his known amiability, his known geniality of spirit, that would justify any lawyer who ever practiced before him in offering the discharge of a contumacious witness before him on the ground

that he would try to make out his case by the residue of the witnesses. I should think that lawyer would have been in danger of going to prison for contempt of court, as well as the witness. This is that branch of that answer; the other branch is:

That I am now ready to go before the special committee of the Senate and to testify that neither directly nor indirectly did I receive the copy of what purports to be the treaty of Washington from any Senator or officer of the Senate, nor, so far as I know, from any employé thereof.

“Neither directly nor indirectly did I receive the copy.” The words are well chosen. The answer has been drawn with care. There has been some professional ability about it from the class of persons enumerated in it, to which I will refer after a while, and the language used is that he did not “directly or indirectly receive the copy.” It refers entirely to the mere manual reception of the copy that he got. He got it from the hands of somebody that was not an officer of the Senate, either directly or indirectly; but he refuses to say from whom he did get it so that the Senate may know through what channel it came before it got into the hands of that person; and that is the gist of this whole offense after all. It is not the question of whether Senators or the employés of the Senate are exonerated by this answer. That is not the question that we have really before us. I will come to that after a while.

So, Mr. President, the answer leaves open the question of whether it was not, either directly or indirectly, through a Senator that that copy which this witness obtained did get to his hands. It is not a clear, unequivocal statement which would authorize us to say that this body is free from blame. Now, sir, that is one misconception. What is the other?

Mr. CONKLING. I remind the Senator that there are upon the record the questions and the sworn answers of the witness before us upon this very point, which he should take in confirmation of the very clear statement that he has made. Those questions and answers he will find, if he looks to them, are expressly to the point that the witness could not state that this copy did not come from a Senator or from the Senate. He expressly disclaimed any knowledge or ability to make answer in that way, which, the Senator will see, confirms very strongly what he is now saying.

Mr. SCOTT. This statement, made by a member of the committee, only strengthens the position which I have been endeavoring to place before the Senate. I come now, Mr. President, to the reasons given by the witness for refusing to answer. What are they? This is the one to which I wish to call attention.

It is the uniform practice of members of my profession to regard as confidential the sources of all the news which they receive, and there is always an implied promise of secrecy whenever information passes into the hands of a newspaper man. This pledge of secrecy is considered among my professional associates as a client's secrets are to an attorney, a patient's secrets to a physician, or those of a dying man to a minister of the gospel; and were I, therefore to violate it by answering the question propounded, I firmly believe that I should render myself infamous in the eyes of my professional associates.

This is the position in which the witness puts himself, and this is the position in which the remarks of the Senator from Missouri [Mr. Schurz] were calculated to place him before the country. Now, Mr. President, I need not call to the attention of many of the members of this body where the analogy in these cases ceases; but I do wish it to go upon the record, as it has been put in here as a justification, how far different these supposed analogous cases are from his case.

In the first place, here is an offense against the Senate, if it be an employé of the Senate, an officer of the Senate, or a member of the Senate, who has communicated this treaty; and it was known to this witness that it would be an offense in a Senator or in an employé of the Senate to communicate anything which the rule of the Senate forbade him to communicate. If it were, then, an employé of the Senate, and that is what we are seeking after, and an approach were made to this witness to give him what the rule of the Senate forbade, he is in complicity with the person whom he seeks to shield; and could it ever be held that a *particeps criminis* would be protected from testifying in a court because he stood in a confidential relation to the man with whom he had been associated in committing the offense? If so, good-bye to criminal justice. There is another rule which might shield him, but that I will come to directly.

But, again, in the case of a lawyer, it is the client's privilege, not his, to keep secret what the client has communicated to him; and when he is called to the stand the court informs him, "because of the sacredness of the relation existing between you and your client, and for reasons of public policy, you dare not disclose what your client has communicated to you, but he can unseal your lips, and if he give his consent you may testify." So, in the case of a physician, it is the patient's privilege. He, in the sacredness of professional confidence, may communicate that which he would not whisper in any other human ear; and for reasons of public policy, that the physician may have the confidence of his patient, and that he may exercise his healing art to cure the infirmities which a man would not reveal to his most intimate friend, these communications are held sacred. And so, in the cases where this is the rule, of communications to a clergyman. There are reasons of public policy which forbid these men, not because of their privilege, but because of the privilege of those with whom they are associated, from communicating what they know.

But now what is this case? What is public policy here? Here is the Constitution authorizing each House of Congress to keep certain proceedings secret for reasons of public policy. Here is the act of Congress declaring that the protection which ordinarily shields a witness from answering to questions which will even make him infamous shall be removed, and declaring that he must answer under a penalty. Here, then, is the highest law of the land, the Constitution, and the statute law of the land, one declaring, as a rule of public policy for the purpose of carrying out the provisions of the other, the Constitution, that a witness before a Congressional committee shall answer these questions. Here, then, the analogies which give the privilege to a client, and to a patient, and to a dying man, for reasons of public policy are invoked to shield a man for violating the highest principles of public policy, as enunciated in the Constitution and by the law of Congress! These are the distinctions, and they ought to be borne in mind.

It is not the question, Mr. President, whether these men should be imprisoned for a day or an hour or not; but, as the Senator from Wisconsin, in words more eloquent than I can use, said, it is whether the individual opinion of a man as to his honor or to his obligation shall be above the law; and we are brought here now not to consider whether we would wish these men to be imprisoned—if that simply were the question there would be no difficulty about the case—but as to whether the whole system adopted by Congress for the purposes of carrying on public investigations, and here superadded for the purpose of preserving the secrecy of those proceedings which the public interests

require to be secret, shall be abandoned and the Senate shall declare that they will not undertake to ferret out an offense against that law and against that policy. There is more in it, Mr. President, than the mere question of the individual imprisonment of these men; and in determining it we ought not to forget that when the law-making power proclaims to the public that the law ceases to be a sword for those who violate it, it will soon cease to be a shield to those who may invoke it for their protection.

Mr. MORTON. Mr. President, the motion is to strike out that part of this resolution which provides for the continuance of this committee during the vacation. It is proposed that, in order to keep these young men in prison, this committee shall be continued as a formality through the vacation. It occurs to me that there might be a corresponding duty on the other side, that the committee should stay here during the same period, in order that if these young men should at any time reconsider their purpose they might have an opportunity of going before the committee and testifying. But it would be a very empty formality for a very serious purpose if this committee is to be formally continued by resolution and the members of it separate to the four corners of the continent as soon as the Senate adjourns.

Mr. President, I undertook to state yesterday that I believed our jurisdiction in this matter was confined to the violation of the thirty-ninth rule, and that this proceeding is carried on only under the terms of that rule. That rule provides:

That all confidential communications made by the President to the Senate shall be, by the Senators and officers of the Senate, kept secret.

The obligation is upon the Senators and the officers of the Senate; the rule extends to nobody else; and our jurisdiction in this inquiry extends to nobody but to Senators and officers of the Senate, and the proposition which I submitted yesterday was that when this Senate became reasonably satisfied that this treaty was not divulged through a Senator or an officer of the Senate this inquiry should stop at that point, and I desire now to repeat that proposition. I believe that if this prosecution is continued beyond that point, beyond the point of reasonable satisfaction, that this treaty did not come through a Senator or an officer of the Senate, it will be regarded, and justly regarded, as passing from the field of legitimate examination to persecution. There is no reason, there is no policy, that can be or has been suggested in my hearing for continuing this prosecution one moment beyond the time when a majority of the Senate is reasonably satisfied that this treaty was not divulged through a Senator or an officer of the Senate.

Now, Mr. President, I submit that the evidence thus far given by these witnesses ought to satisfy us reasonably that this treaty was not thus divulged, and I ask the candid consideration by the Senate of this proposition for a few minutes.

In the first place, I may remark that these are gentlemen of intelligence, and it is not to be presumed that they do not understand where this treaty came from. They may not know positively, because they can not swear to a thing they have not seen, but undoubtedly they have a belief, undoubtedly they have an opinion, as to where this treaty came from. It can hardly be supposed that they have not an opinion upon that subject, and I take it for granted that they have. Now, what was the testimony of Mr. Ramsdell on that subject? I read it as published in the Globe. The Senator from Illinois [Mr. Trumbull] had asked the question, and then proceeded to say to the witness, Ramsdell—

The object of my question was to ascertain whether this copy was obtained through the Senate. I wished to know whether you obtained any copy of this treaty from or through the Senate in any way.

The WITNESS. I had decided, in case I was called upon to swear to it, to answer that to my knowledge or belief—

How much stronger, I ask, could he make it unless he gave the name of the man? He says:

To my knowledge or belief it was not obtained in any manner from a member of the Senate or any officer of the Senate.

I submit, not as a mere technical question as propounded by a lawyer, but I submit to the broad, common sense of this Senate if he has not answered as strongly as he can answer unless he divulges the name of the man and tells where the man came from and where he got the treaty. He says according to his knowledge and belief it was not obtained in any way from a Senator or an officer of the Senate. I submit to the members of the Senate, unless there be a great anxiety to deal harshly with these young gentlemen, that here is a reasonable denial that this did come through the Senate. The witness could not make it any stronger, and I have no doubt in the world that he told the truth.

What was the answer of the other witness? And the answer referred to by the Senator from New York is dependent upon the form in which the question was put, and I will refer to the form in which the question was put, explaining the character of the answer. I read from the examination of Mr. White:

Question (by Mr. TRUMBULL). I wish to ask you distinctly whether you know—

That is the form of the question—

I wish to ask you distinctly whether you know that the copy you sent came through the Senate?

He put it in an affirmative form. The answer is—

I do not know that it did.

In direct response to the very form of the question that was asked. Perhaps the Senator, if he had reflected a moment, would not have put the question in that form. Again—

You do not know whether it did or did not?

He did not ask him for an opinion, did not ask him for a belief, but asked him for his knowledge—

Question. You do not know whether it did or did not?

Answer. I do not know whether it did or did not.

He answered the questions just as they were put. He could not have known, perhaps, whether that copy had ever been in the hands of a Senator as a matter of positive knowledge, unless he had followed the history of that treaty from the time it was handed out from the office of the Secretary of State, or even before it got there. He was not asked as to what he believed or as to what was his impression. The circumstances must have made some impression on his mind, but the question is simply propounded in the form of asking his absolute knowledge, on the part of the Senator from Illinois. The witness gives some other answers on that subject:

Question. Did you obtain it from any member of the present Senate of the United States?

Answer. I did not.

The question is answered fully, all that is asked of him.

Question. Did you obtain it in the room of any Senator of the United States?

Answer. I did not.

Question. Did you obtain it in any room occupied by any Senator of the United States?

Answer. I did not.

Question. Where did you obtain it?

Answer. I respectfully refuse to answer that question.

In view of that testimony, which does not bear out, I submit, the statement of the Senator from New York, I call attention to what he says in his answer to-day:

I am now ready to go before the special committee of the Senate and to testify that neither directly nor indirectly did I receive the copy of what purports to be the treaty of Washington from any Senator or officer of the Senate.

He could not make that statement conscientiously, it would be moral perjury at least, if he believed, though he did not know, that it came through the Senate. If the circumstances under which he got that treaty created the impression or the suspicion in his mind that indirectly it had come from a Senator, he could not make that answer, nor could he have made conscientiously the answers given in the testimony I just now read. Therefore, I submit to the Senate that these gentlemen have substantially answered that this treaty, to the best of their knowledge and belief, did not come from a Senator, directly or indirectly, or through any officer of the Senate.

But now how has that been met on this floor? By the statement of the Senator from Wisconsin that if the committee were allowed to go on they believed they could trace this to a Senator. I think that statement ought not to have been made. If it is made, there ought to be some circumstances, and why are they not given here, by which it can be traced to a Senator? If there are circumstances by which it can be traced to a Senator within the knowledge of the committee, why have not the witnesses been brought and the matter proven before the committee, and let us have the evidence here? No; the positive declarations of these young gentlemen that, to the best of their knowledge and belief, this treaty did not come through the Senate in any way, are met by the simple declaration of the Senator from Wisconsin, "If you let us go on, we will trace this to a Senator." If the committee have evidence of that kind which authorizes him to say so, that evidence ought to have come before the Senate. If they have not yet taken it before the committee, let them send for the witnesses. If there is anything that places this at the door of any Senator, let it be brought out, and not have this broad imputation thrown out here that may rest upon one or may rest upon a dozen members of this body.

I submit that the Senator in that matter has gone too far unless he is prepared to go further and state what are the circumstances which indicate that this thing will be brought home to the door of a Senator; and if they have circumstances now that point to a Senator, why not send for him before that committee at once? Let him be brought there and put upon his oath. If he refuses to answer, that would be very strong evidence that he was a guilty man; but if he does answer straightforwardly, it is hardly to be presumed, and you have no right to go upon the presumption, that he would commit perjury. I do not believe any Senator in this body would commit perjury under such circumstances.

But it is said that a number of these copies were handed out to Senators in advance. So they were, I do not know how many; five or six to those who were members of the Committee on Foreign Relations. I am told they were given also to other Senators. Perhaps there is no sort of doubt about that but the names of the Senators to whom those

copies were given can be obtained in the State Department. They can all be called upon, and it will take but a very little time for each one of them to account, if he can account, for his copy; and if there are any other witnesses who can be summoned to make a direct case, or to make a *prima facie* case, or to make a case of suspicion that calls upon any Senator to get up on this floor and vindicate his position, let those things be stated. All that is fair; and all that is better than to meet the statement of these young gentlemen by the general assertion here, "If you let us go on, we shall bring this thing home to the door of a Senator." There may be a great anxiety to bring this thing home to some Senator. I do not know how that is. I hope not. But if the facts exist that authorize this statement to be made here in the face of the positive testimony of these young men, that according to their knowledge and belief it was not obtained in any way from a Senator, let us have those facts. It is a matter of simple justice.

Mr. FENTON. As he seems to think it is well for every Senator to purge himself, or to speak of his knowledge in respect to this treaty, so far as he has any, I am glad to seize so pleasant an opportunity. I observe a paragraph in the Patriot of this morning which says that this investigation thus far seems to point to one of the Senators of this body, giving his name. I desire to state that I came here on Wednesday myself, and I neither had nor saw a printed copy of the treaty, or what purported to be the treaty, unless it was the printed copy which was read at the Secretary's desk, until Thursday afternoon at three o'clock, the afternoon of the day it was printed in the New York Tribune. But my purpose in rising was to ask the chairman of the committee, whom I do not see in his seat, whether it is true, as stated in this paper, that the committee have not hesitated to say in a semipublic manner what Senator it was. As I do not see the chairman now in his seat, I will defer the inquiry until some other time.

Mr. MORTON. One word further, and I am done. Mr. President, we know the spirit that prevails through the profession to which these young gentlemen belong. This is not the first illustration of it. There have been illustrations of a similar character, both in this Capitol and elsewhere, before. We know that these young gentlemen feel that if in the presence of any pains or penalties they should make this statement they would be dishonored. They feel that way. You may threaten them with imprisonment in the common jail on bread and water, and yet they would rather encounter that than encounter the scorn and contempt of their fellow-members in this profession.

This is the way they feel about it, and if they go forward and tell what will reasonably vindicate this Senate, its members and officers, ought we to push them further? Should we not rather regard this as in the nature of an appeal, that we shall consider the circumstances under which they are placed? You may imprison these men; but do any of you believe that you will make them divulge or that you will make any subsequent member of that profession divulge under like circumstances? We have no reason to believe that. Their honor, their reputation, their pride, their word, have all been pledged that they will not make this disclosure, and they will go up to this disconsolate, gloomy dungeon and stay there before they will do it; and what have you accomplished?

Now, I ask that we shall take a reasonable view of this case. Consider their position, consider the views that they take of the honorable obligations that are imposed upon them, consider what they have already answered to us; for they have answered every question which

has been asked except where the treaty came from. Mr. Ramsdell has said, and swears to it, that to the best of his knowledge and belief it did not come from or through the Senate in any manner or form. Mr. White says, in response to a direct question asked by the Senator from Illinois, that if this came from the Senate or through the Senate in any way he does not know it, has no knowledge of it. He is willing to swear that he did not receive it from the Senate or an officer of the Senate, directly or indirectly.

One word further. This is not the end of this matter with these young gentlemen, no difference what you may do. You may imprison them if you please, but their imprisonment can not be pleaded in bar to the prosecution that may be set on foot, and is very certain to be set on foot under the certificate that the President of this body will make to the court of this District. They will certainly be presented to that court under the law and under his certificate. They are to be put on their trial, and the case can be made out, and will be made out, that they have refused to testify. They will have no defense to make in mitigation of their punishment, and it can not be less than imprisonment for one month under the terms of the law. Now, when the law has provided for this case already, and they are to be remitted very certainly when they go from here to a trial, and perhaps to punishment, when it is certain that we can not get the knowledge from them that is desired by the committee, I ask if we should not stop, if we should not say that enough has been done, and if there is to be anything further done leave it to the court?

Mr. SUMNER. I should not have said another word but for the remarks of the Senator from Ohio [Mr. THURMAN] and an expression of opinion which fell from him in those remarks. I understood him to argue that by continuing this committee after the close of the present session of the Senate these witnesses might during that continuance be kept in the custody of the Sergeant-at-Arms. I did not understand him to adduce a single parliamentary precedent supporting that conclusion. I ask the Senator if he knows of any parliamentary precedent supporting that conclusion?

Mr. THURMAN. I can not on the spur of the moment produce any precedent of such a case. I have no doubt I could find them if I had the time to hunt them out, but I do not have in my memory at this time any such case. I gave the reasons, which seemed to me to be satisfactory, why it is in the Senate's power to appoint committees to sit during the recess of the Senate, and if they have that, and those committees are charged with the duty of taking testimony, and a witness refuses to answer, especially during a session of the Senate, and the Senate orders him to be put into custody until he does answer, I do not see how you can get rid of the power to do it, if you have the right to authorize a committee to sit during the recess. It is wholly distinct from the question, I beg to remind the Senator, of whether a committee sitting in the recess could do it of its own motion. This is the act of the Senate, not the act of a committee.

Mr. SUMNER. Now, Mr. President, I understand that the Senator from Ohio adduces no parliamentary precedent. There is no such precedent. I challenge any Senator to produce it. I challenge the chairman of the committee, the Senator from Wisconsin, to produce any parliamentary precedent sustaining the conclusion. My friend from Ohio argues from the powers of a court. While the court is in session it has the power to keep a witness in custody for contempt. But a Senate committee is not a court. It is a parliamentary incident to legislative

proceedings, or, as in the present case, to proceedings of the Senate in executive session. It is an incident. The committee has no power which is not conferred upon it by the Senate; especially has it no power to commit for contempt.

Notoriously, when a witness refuses to answer before a committee, the committee reports the fact to the Senate or to the House, and it is by the order of the Senate or of the House that the contumacious witness is taken into custody, not by the order of the committee, not by any power inherent in the committee, not by any vitality of the committee, but by the Senate or the House, and the contempt expires with the session of the body that commits. When I lay down this conclusion I know that I can not be answered. I know that there is no precedent to the contrary, and I know that I speak the time-honored parliamentary law of England, adopted and repeated in our own country.

Mr. THURMAN. I can show you authority in the British House of Commons.

Mr. SUMNER. I will read the authority of the British House of Commons. I have in my hands now May's Parliamentary Practice, which is the most authoritative work in England on this subject.

Mr. THURMAN. If the Senator will allow me to interrupt him, there is a difference between the House of Lords and the House of Commons.

Mr. SUMNER. That I understand.

Mr. THURMAN. The House of Lords does not imprison beyond its sessions; the House of Commons does.

Mr. SUMNER. It is just the other way. The House of Lords imprisons beyond the session and the House of Commons does not. Now for the rule, as I read it from May's Parliamentary Practice, page 105:

No period of imprisonment is named by the Commons, and the prisoners committed by them, if not sooner discharged by the House, are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody they would be discharged by the courts upon a writ of *habeas corpus*.

Such is the statement of this experienced parliamentarian. I need not say that the author of this work is at this moment, and has been for a long time, the clerk of the House of Commons—familiar with its usages as any living person.

I give the words of May. But that is not all. The chief justice of England, Lord Denman, in giving judgment in the famous case of *Stockdale v. Hansard*, the most important case of contempt which has occurred during these latter years, expresses himself as follows:

However flagrant the contempt, the House of Commons can only commit till the close of the existing session. *Their privilege to commit is not better known than this limitation of it.* Though the party should deserve the severest penalties, yet his offense being committed the day before the prorogation, if the House ordered his imprisonment but for a week, every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by *habeas corpus*.

That is the judgment of the chief justice of England. Now, sir, to what extent has this been adopted in our country? I have in my hands the work, which my friend from Ohio has already cited, of my late friend and early associate, Luther S. Cushing, entitled *Law and Practice of Legislative Assemblies*, and I turn to what he says under the head of Imprisonment, as follows:

According to the parliamentary law of England there is a difference between the Lords and Commons in this respect: the former being authorized and the latter not, to imprison for a period beyond the session.

That is the English rule. Now, how is it in our country according to this authority?

In this country the power to imprison is either incidental to or expressly conferred upon all our legislative assemblies; and in some of the States it is also regulated by express constitutional provision. Where it is not so regulated, it is understood that the imprisonment terminates with the session.

In other words, in our country we have followed the law of the English House of Commons, and not the law of the House of Lords. The chairman of the committee to-day proposes to ingraft upon our usage a practice borrowed from the House of Lords. While about it I think he had better follow that other usage, which is thus stated.

It was formerly the practice to make prisoners receive the judgment of the House kneeling at the bar. In both Houses, however, this practice has long since been discontinued, although the entries in the Lords' journal still assume that the prisoners are "on their knees" at the bar.

It appears that the discontinuance of this practice in the House arose from the refusal of Mr. Murray to kneel, when brought up to the bar of the House on the 4th of February, 1750. For this refusal he was declared "guilty of a high and most dangerous contempt of the authority and privilege of this House," was committed close prisoner to Newgate, and not allowed the use of pen, ink, and paper.

Now, as the authority states that the entry in the Lords' journal down to this day is that the prisoners are "on their knees" at the bar, and as the Senator from Wisconsin proposes to take a leaf from the prerogatives of this House, I think he had better complete the work and require the entry on our Journal that the prisoners receive this judgment on their knees.

Mr. CARPENTER. If the Senator really thinks that ought to be done, why does he not move, while on the floor, to amend the resolution in that way?

Mr. SUMNER. If the desires of the Senator in other respects are to be carried out, I think the question of the form is very immaterial. I think when the Senator has proposed to commit these witnesses to the common jail——

Mr. CARPENTER. Allow me one word further. In other words, if the witness is to be compelled to answer, he might as well be disgraced.

Mr. SUMNER. No; that is not the point. The point is, whether the Senate shall undertake to exercise a prerogative that does not belong to it, and which is inconsistent with the principles of constitutional liberty. If the Senator who claims this prerogative insists upon going to the House of Lords for this new feather of prerogative, let him complete his work and require the witnesses to kneel before the Senate, according to the old requirement in England and the present entry in the Lords' journal, or at least let him have a similar entry in our journal.

But, sir, what says the American authority on this subject? I have already read the first part, concluding with the words:

Where it is not so regulated it is understood that the imprisonment terminates with the session.

It is not the English authority alone that says this. The great American authority says it. Nor is this all. He proceeds:

Where there is provision regulating the time of imprisonment, if a commitment is general, the prisoner will be entitled to his discharge on the termination of the session; if it is for a certain time, the prisoner will be entitled to his discharge on the expiration of the time, or the termination of the session, whichever first happens.

And now it is proposed by a subtlety of device absolutely without precedent to keep this committee alive in order to keep these witnesses in custody. The committee is to be projected into the recess,

not for any real purpose of inquiry, but under the idea that in this way the punishment of these witnesses may be prolonged.

Mr. THURMAN. Does the Senator say that a punishment for contempt by imprisonment beyond the expiration of the session is absolutely without precedent in the United States?

Mr. SUMNER. Well, sir, that would depend upon something else [laughter] which I am coming to.

Mr. THURMAN. The Senator has only to recollect that this very Capitol was the dungeon of Patrick Woods for three months after the House of Representatives adjourned.

Mr. SUMNER. I say nothing of constitutional provisions in our country which may interfere with the parliamentary law; but my answer to the inquiry of the Senator from Ohio is clearly that by parliamentary law no person can be detained in custody after the close of the session. There is no doubt about it. The authorities are explicit and unanswerable. But it is not left in all the States to parliamentary law; there are constitutional provisions which step in and undertake to deal with it. Thus the constitution of Maine gives authority to each branch of its legislature, during the session, to punish any person not a member by imprisonment not extending beyond the session. The words of the constitution as given here are as follows:

Provided, That no imprisonment shall extend beyond the period of the same session.

The constitution of New Hampshire has a special provision on the subject as follows:

Provided, That no imprisonment by either [House] for any offense shall exceed ten days.

Now I meet the inquiry of the Senator. Suppose the committal to be made on the last day of the session or within a few days of the expiration of the session in New Hampshire, I will not undertake to say that it may not be continued for the period of ten days, the limitation of the constitution stepping in to modify the parliamentary law. Different States have different provisions on this subject.

Mr. THURMAN. What page do you read from?

Mr. SUMNER. I read from page 271 of Cushing.

Mr. THURMAN. What section?

Mr. SUMNER. Sections 691 and 692. I said that different States had different provisions on this subject. In Florida and Tennessee—we have Florida Senators and Tennessee Senators here:

In Florida and Tennessee the imprisonment is general and must expire with the session, while in Indiana and Illinois it can not exceed twenty-four hours; in Alabama, Mississippi, and Texas, forty-eight hours; and in Louisiana it is limited to ten days.

I have nothing to say on the operation of constitutional provisions fixing a specific time. It may be that under those terms an imprisonment may be effective for the time appointed even after the close of the session. This stands on constitutional law. My point is, that in the absence of any constitutional provision, under parliamentary law, as solemnly declared in England and as recognized by our first American authority, any committal for contempt by the Senate or by the other House must expire with the session. The moment, sir, your gavel falls the prison door opens. As Senators go home the prisoners go out. Such is the law, and the Senate can not alter it. Suppose the committee authorized to sit during the session and the Sergeant-at-Arms undertakes to detain these witnesses in custody, do you suppose such intelligent gentlemen would sleep a night without a writ of habeas corpus which would bring their rights in trial before a court of justice?

We already have the language of the chief justice of England settling the question in advance:

Though the party should deserve the severest penalties, yet, his offense being committed the day before the prorogation, if the House ordered his imprisonment but for a week, every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by habeas corpus.

Mr. MORTON. I ask him what possible connection there can be between the two things, the continuation of the committee and the imprisonment? What effect can the continuation of the committee have on the imprisonment? I ask him if the reason why the imprisonment can not extend beyond the session is not this, at least in part: that being imprisoned by order of the Senate, the persons can only be discharged by order of the Senate, and therefore if they are left in prison when the Senate adjourns there is no authority to discharge them until the Senate meets again next winter?

Mr. SUMNER. The inquiries of the Senator are well put, and it is impossible to answer them except in one way. I am obliged to the Senator for his interruption. The prolongation of the powers of the committee with any view of continuing the imprisonment is a vain thing. It is attempting to do what can not be done. The committee has no power over imprisonment. If you send these witnesses away from your bar in custody it is by the order of the Senate, and not by any order of the committee, and their imprisonment expires with the Senate, because it takes its life from the Senate.

Mr. CARPENTER. Does the Senate expire at the end of this short session?

Mr. SUMNER. The session of the Senate expires. The point is the session of the Senate. This session will die some time or other; and when it does die any order for imprisonment dies, and by the attempt to continue it in this artificial way by a committee is an attempt at the impossible. You are doing what you can not do. You are borrowing a prerogative of the House of Lords without completing it, and recording that these witnesses knelt to you.

I know not if I need say anything more on this head. I should not have adduced these authorities but for the remarks of my excellent friend from Ohio, who founded his conclusion, it seemed to me, upon his ample experience as a judge, rather than upon parliamentary law. A committee of this body is not a court, which in cases of contempt is a law unto itself, a complete body, not deriving its power from any superior body; but a committee is simply the incident of the Senate; and when the session of the Senate is brought to an end an imprisonment by the Senate is brought to an end also.

I know not if it is necessary to proceed with the general consideration of this question. I prefer to confine myself at the present moment to the precise point on which the Senate is to vote, that is, the question of prolonging the powers of this committee with the expectation thereby of continuing still longer the incarceration of these witnesses. I protest against the whole idea, not only as impossible, but as in conflict with the first principles of parliamentary law, and so radically wrong that even if a precedent in this body could be found it ought not to be adopted. But no precedent can be found, no semblance of a precedent. I challenge Senators to produce it.

Allow me to make one remark of a general character. I will begin by an inquiry. Is not this whole question embarrassed much by the absence of any penal statute regulating the secrets of the Senate? Were there a penal statute making it criminal to divulge or to circulate

the secrets of the Senate or confidential documents our course would be easy and I doubt not the cause of the witnesses would be perfectly easy. We are not acting under any penal statute. None such exists. There is no law of the land which says it is wrong for these witnesses to circulate a document of the Senate which they have received.

Mr. CARPENTER. If my friend will allow me, I suggest to him that we are acting under a penal statute in the sense in which he mentions it. We are not punishing anybody here for divulging secrets, but trying to compel a man to answer when the statute says that he shall answer and shall not set up any privilege, even that the answer will subject him to infamy.

Mr. SUMNER. I understand the point of the Senator. He brings us to the question of compelling the testimony which is authorized by statute. I go behind the question of compelling the testimony to the legitimacy of this whole inquiry. I say that you have no penal statute forbidding the publication of a confidential document. I say that these witnesses, in giving the treaty to the public, have violated no law of the land; nor have they violated any provision of the Constitution of the United States. At the utmost, even according to the allegations of the committee, they may have violated a rule of the Senate. Of that I know nothing. Thus far the evidence does not show that they have even violated a rule of the Senate. Surely they have violated no law. This is clear and unanswerable.

If Senators are so anxious to maintain the secrets of this body, let them be practical; let them bring in a statute that shall make it a penal offense for any Senator to communicate what has passed in executive session, or at least for any person not a Senator to circulate or to publish any confidential document. Such a statute would make the course of the Senate, and also of the citizen, perfectly clear. I do not doubt that the witnesses at the bar, I do not doubt that all the representatives of the press, would bow before such a statute solemnly declaring that confidential documents should not be circulated except under fixed penalties. That would be the law of the land. No such statute is on our books. We are called to enforce simply a rule of the Senate, and a rule, too, of the Senate applicable on its face only to Senators and the officials of the body. Therefore it is only indirectly that you obtain jurisdiction of these witnesses, not directly. They have not offended even against your rules, as they have not offended against any statute of the land. And yet you bring your power to descend upon them.

There is one other remark that I would make also of a general character. I have made it in this Chamber before, but I think it will bear repeating. I do not like this idea of striking at the agent when you know the principal. The chairman of the committee read to the Senate yesterday the bold words of the Tribune in New York declaring its responsibility for this act. It was at the orders of this journal and in its service that this document was obtained and the Tribune gave it to the public. If an offense has been committed, it was in New York, in the office of that powerful paper, much more than here. These witnesses were only the agents; they were not the principals; and until the final publication there was an opportunity to arrest it. Therefore is the principal responsible rather than the agent, and therefore do I say that the Senate would do better if in this inquiry it aimed directly at the chief, without spending so much time on the subordinate.

Mr. CARPENTER. I presume the Senator would not contend that that editorial would be evidence against the proprietor of that paper, and

we can not take the very step the Senator thinks should be taken without first having in some tangible form the facts which would make that paper responsible. If, for instance, this examination goes on and these witnesses are compelled to answer questions, and they shall say they were directed by the proprietor of that paper to furnish the document at any price and transmit it there to be illicitly published, that will lay the foundation for the proceeding which the Senator wants taken against the Tribune.

Mr. SCOTT. Will the Senator from Massachusetts permit me a question at that point?

Mr. SUMNER. Certainly.

Mr. SCOTT. He having already stated that there is no penal statute under which anybody could be punished for publishing the treaty, how could we proceed against the proprietor of the newspaper?

Mr. SUMNER. I am very glad the Senator asked that question. I perceive certainly as keenly as he does the folly of the proceeding, but you may proceed against the proprietor of the newspaper by the same right and title that you are proceeding now against these witnesses.

Mr. SCOTT. If we had the newspaper editor before the committee and he refused to answer the questions we might.

Mr. SUMNER. Since the object of imprisonment is with a view to find out whence this copy came, I think the Senate would be better employed in summoning the principal. That is the way it strikes me. If the Senate is disposed to persevere in what more than one Senator has called "folly," then I say strike at the principal. The Senator from Pennsylvania is entirely right. There is little ground of proceeding against anybody, but if you are going to proceed against anybody proceed against the principal. I do not know how that may impress others, but that seems to me to be according to reason and to common sense. It is no more difficult to take the principal, and it is much more according to simple equity.

While I am up I may make one other remark. This whole proceeding is inconsistent with the requirements of this age. Senators have heard me before say that the rule of secrecy in the Senate was adopted at an early period when the Senate was a very small body, and when we were much under the influence of European example. Meanwhile, European example has changed, but we have remained unchanged. On the continent of Europe treaties are always discussed in public; certainly in most of the great nations now, in Austria, in Germany; and we know now that the treaty pending here is to be discussed on Monday next before the people of England, according to notice already given by Lord Russell. And yet the Senate, borrowing and continuing this old rule of secrecy, says there shall be no such discussion before the American people. The English people will know the treaty; but our people must not know it. In attempting to impose any such rule of secrecy, permit me to say you fly against human nature itself; you fly against the requirements of liberal institutions; you fly against the demands of the American people. Public opinion, which is more than queen, with "round and top of sovereignty," overrules your attempt, and insists upon publicity. Here is an "irrepressible conflict," and your rule, like slavery, must yield.

You remember well, sir, that there is somewhere in one of the central streets of New York an old milestone with the primitive inscription "Two miles to New York." The city has outgrown that ancient stone, extending miles and miles beyond it; but the venerable monument is still preserved, testifying to a former age and proclaiming an untruth.

Such, sir, is your rule of secrecy. Public sentiment, liberal institutions, the demands of civilization have extended far beyond your old rule, and yet you still keep it standing—"Two miles to New York." If it is to continue let it be like the early stone, only as a curiosity of the past; but do not undertake to compel the American people to live by it; especially do not imprison fellow-citizens because they do not recognize its authority.

Mr. DAVIS, of Kentucky. Mr. President, in the remarks that I submitted to the Senate some time since I assumed the position that if a Senator received from the State Department or from any other source a copy of the treaty, and after the Senate had received the treaty from the Executive, communicated that State Department copy, it would not be a violation of the secrecy of the Senate. I have further considered that position, and I am satisfied that it is erroneous, and I finally withdraw from it.

Mr. CARPENTER. I do not intend to occupy any time, and I should not have addressed the Senate at all but for the remarks of the Senator from Massachusetts [Mr. Sumner], which seems to me, under the circumstances, to be a little remarkable. He meets with the committee, this witness is brought before the committee, and he himself informs the witness that his conduct puts him in contempt of the Senate. He himself concurred, as I understood it; at all events I made the report as a unanimous report (understanding it to be so) of those who were present, and the Senator from Massachusetts, in his seat, did not dissent from it. The conclusion was that the committee should make a report of the proceedings, and the resolution which was to be copied in the report was produced in the committee room from the Congressional Globe when we were all present, I think.

Mr. SUMNER. No.

Mr. CARPENTER. It was not copied then, but it was produced and referred to.

Mr. SUMNER. In committee I understood that I assented only to the conclusion which I announced specifically to the witness, that in my judgment he was in contempt, and I agreed with the committee in reporting that to the Senate, believing that the Senate would then take the whole subject into consideration and see that it was not expedient to go any further.

Mr. CARPENTER. That is a "consummation devoutly to be wished for" by these witnesses, but which I did not anticipate. I desire to say just one word in that connection. I have done in this matter precisely what I supposed was my duty as the chairman of this committee. The Senator has seen fit in the speech he has just made to turn this matter upon me as if I was trying to break down the law of the land and imprison some citizen, in consequence of having offered these resolutions, which are mere formal steps in the proceeding of investigation which the Senate ordered the committee of which I was a member to do. These resolutions I have drawn and presented, one after the other, because I understood that was the form of machinery of the thing, and have understood that it was the duty of the chairman having the matter in hand to perform that drudgery and copy these papers and offer them in the regular steps of proceeding. If the Senator from Massachusetts thinks I have any more feeling on this subject than any man in the world, if he thinks I want to see anybody kneeling, if he thinks I want to revive any of the barbarities of the common law four hundred years ago, he is simply mistaken. If he thinks I want to push this investigation one second after the Senate is sick of it, he is mis-

taken in that. The resolution which I offer here in this form I offer, I may say, for the very purpose of testing it. I am willing as a member of this body to take one-seventieth of the ridicule that will fall upon us if we quail in our steps; but I am not willing to be made one of five to suffer vicariously for the whole body.

As a member of this committee I have presented a resolution which is the logical result of what the Senator from Massachusetts himself concurred in in the committee. The very moment the Senate is sick of it, all right. I wish it distinctly understood that I do not want this investigation to go on one minute on my account, and that I have no feeling about it, no desire about it except to perform what I supposed was the duty of the chairman of such a committee.

Mr. SUMNER. I read from Cushing, and I read it especially in reply to the Senator from Wisconsin. He seemed to criticise me because I concurred in the irresistible conclusion that these witnesses were in contempt.

Mr. CARPENTER. Oh, no, not at all. My surprise was that he did not continue to concur in the responsibility; that he bolted the track just as he reached the conclusion.

Mr. SUMNER. Now I am coming to the legal authority. Says Cushing:

There seems to be no reason to doubt that the House may put a contumacious witness into close confinement—and this in fact was all that was done in Paxton's and other cases of the same kind—accompanied with such restraints from communication with other persons as it may deem necessary to prevent the ends of public justice from being frustrated; but whether this right should be exercised or not, in any given case, is a question deserving of very grave and careful consideration.

When the Senator made his report these witnesses were in contempt. The words of this authority came precisely into play. Whether they should be committed was "a question deserving of very grave and careful consideration." I have given to it, in my way, such consideration as I could, and my conclusion is that we had better not proceed any further in this business.

Mr. THURMAN. If the Senator from Massachusetts had permitted me to interrupt him at the time, I should have corrected a mere slip of the tongue when I was stating the difference between the House of Lords and the House of Commons. The remark I made was to the effect that the House of Lords was restricted to its session in the imprisonment of a person guilty of a contempt, but that the House of Commons was not. It was a mere slip, saying "the House of Lords" in place of "the House of Commons." The difference is very well known, and the reason of the difference is very well known, too. The House of Lords is a body of perpetual existence. It never ceases to exist. It is not so with the House of Commons. The House of Commons may cease to exist by the expiration of its term. It may cease to exist by a dissolution. Usually, where it ceases to exist by the expiration of its term, another House immediately takes its place, and it might be supposed to be a case of perpetual succession, without any hiatus; but where the House is dissolved, there is no House of Commons at all until another House is elected.

Mr. MORTON. The authority answers the Senator's argument. The members of the House of Commons are elected for a certain time.

Mr. THURMAN. Seven years.

Mr. MORTON. During that time it is the same House. You say this is the Senate all the time. That is true. The House of Representatives is the House for two years, because the members are elected for that time; but they have two or three sessions in that time, and the

authority is that their power to imprison for contempt ends with the end of the session—not with the end of their term, but with the end of the session; so that the continuance of the term or the continuance of the House has not anything to do with it any more than the continuance of the Senate has anything to do with it.

Mr. THURMAN. If the Senator, had waited he would have heard what I have to say on that subject. I admit the weight of his suggestion; but whether a good reason or a bad reason, that is the reason. The House of Lords is a body of perpetual duration. The Commons is not a body of perpetual duration. When the House of Commons is dissolved, there is no House at all in existence until a new House is elected. That is not the case with the House of Lords; and so with the Senate. It was decided long ago, as soon as the question arose, that there is no hiatus in the existence of the Senate of the United States, because it is presumed that the States will perform their duty of electing Senators; and as only one-third can go out every two years, there is always a quorum of the Senate, and forever must be a quorum of the Senate. It has, therefore, been decided again and again, when the question has come up directly, and was decided very early in the history of the Senate, that the Senate is a body of perpetual duration. That is the reason for it. Now let us come to see what is the rule.

Mr. SUMNER. May I interrupt my friend right there?

Mr. THURMAN. Yes, sir.

Mr. SUMNER. I merely wish to call his attention to a distinction which he certainly has not alluded to between the Senate and the House of Lords. The House of Lords has two functions, one legislative and the other judicial. The judicial function goes on from day to day and from adjournment to adjournment throughout the whole year, and in that respect the House of Lords is a permanent body. It may be in session every day of the year. In the sense of the law it is in session every day of the year, so that an order made by the House of Lords can be executed throughout the whole year.

It can be reconsidered; it can be annulled. It is not so with the House of Commons, which, I need not remind the Senator has but one function, the legislative, and when the legislative session expires any committal made in that session expires also. Now, I take it that the prerogatives of both Houses of Congress are modeled on the House of Commons and not on the House of Lords; and I assume that, though in one sense the Senate is a permanent body—the Senator from Ohio is not wrong in that statement; it differs from the other House in that the body never comes to an end—yet the Senate is divided into sessions, precisely as the other House is divided into sessions, and being so divided, it is clearly distinguishable from the House of Lords, and the natural incident of the House of Commons attaches to it, that any committal made by it during its session expires with the session.

Mr. THURMAN. The House of Lords, it is true, sits as the highest court of appeal in the realm, and three of the law lords make a quorum. That is all very true, but in a legislative sense the House of Lords is a body of perpetual and continuous existence, and so is the Senate of the United States. There are sessions of the House of Lords to sit as a judicial tribunal to try appeals and long vacations between those sessions, just as there are sessions of the House of Lords for legislative business and long vacations between those sessions.

Mr. STEWART. The Senate is a court to try impeachments.

Mr. THURMAN. We are a court in that sense to try impeachments as the House of Lords is a court to try appeals; but that will be found,

I think, to have nothing at all to do with this question. Now, let us see what it is. The Senator from Massachusetts proposes to have read an authority here that settles this question; and what is the authority? I beg to call the attention of the Senate to that. The authority is this clause in Cushing's Parliamentary Law:

Where there is no provision regulating the time of imprisonment, if a commitment is general, the prisoner will be entitled to his discharge on the termination of the session; if it is for a certain time, the prisoner will be entitled to his discharge on the expiration of the time, or the termination of the session, whichever first happens.

What authority is that? That is the authority of Mr. Luther S. Cushing, for which he cites no single case in the world. It is the simple opinion of Mr. Cushing. He says it is understood so and so. Mr. Cushing's opinion, entitled to great respect as it is, is no more than the opinion of any other lawyer; and this opinion, which is in mere general words and has no application to the particular case that is before us, and without the particular case perhaps ever having been in his mind at all when he wrote these words, is heralded here as an authority that settles the question. It is not an authority at all; it settles nothing; and he refers to no decision whatsoever upon the subject.

Now, there is a case, as I have said, in which the House of Representatives has decided directly the reverse of this. It was a case in which I think the decision was monstrously wrong. It was wrong, however, in its substance. It found that an assault and battery upon a member of the House of Representatives in the city of Richmond was a contempt of the House of Representatives. I think that was a most egregiously wrong decision. I think Pat Woods was guilty of no indignity toward the House of Representatives, of no contempt of the House.

Mr. MORTON. Was not that case on the ground of a breach of the privileges of the House?

Mr. THURMAN. It does not matter one particle whether it was put on the ground of a breach of privilege or of contempt, the thing is precisely the same; for you have just as much right to punish for a contempt as you have for any breach of privilege whatsoever. The case is precisely the same. Suppose Pat Woods had knocked down a member of the House of Representatives in the Hall of the House, would that have altered the case? Would not that have been a contempt of the House? Would not that have subjected him to punishment? And yet upon full discussion, on reference to all the authorities, that House did decide that it had a right to punish him by a definite sentence of imprisonment, a sentence to three month's imprisonment, although the session of the House ended in a few days after that sentence was pronounced, and he was kept in prison in this very Capitol for nearly three months after the end of that session.

Mr. BAYARD. That was punishment.

Mr. THURMAN. It was punishment, and I am coming to that, and showing the distinction between the two.

The first thing to be noticed, however, is that this authority of Mr. Cushing is not expressly in reference to such a case as this. No such case is stated, no case was probably in his mind at all, and he cites not one single decision to support his mere opinion, and his opinion is that "it is understood." "Understood" by whom? He does not say. Not "so decided," not that it ever was decided so at all, but simply "it is understood;" that is, it is Mr. Cushing's opinion that it is under-

stood that such and such is the law. That is no authority, I need not say to the lawyers of the Senate.

But now, Mr. President, let us look at the matter further.

The next point made, and that which appears to be most forcible, is suggested by the Senator from Indiana, that the body which commands the imprisonment is the body that is to order the discharge. Let us have a little plain understanding upon that. In the first place, no one pretends that a committee of the Senate can commit a witness to imprisonment. No one pretends that a committee sitting either during the sessions of the Senate or sitting in vacation has any power to commit a witness to imprisonment for contempt. The committee must report the fact to the Senate, and the Senate must order the imprisonment, if it is ordered at all. We all agree upon that. But what is the proposition here? The proposition here is that the Senate shall order the imprisonment. But, then, it is said that the body which orders the imprisonment must be the body to order the discharge. That is not true at all in the sense in which the expression is used. The body that orders the imprisonment does order the discharge, if it orders the discharge upon the happening of a certain event.

If the Senate says that this man shall be imprisoned until the 1st day of June next, when June comes the same body that orders the imprisonment orders his discharge on that day. If it says he shall be imprisoned until he makes answer to a certain question, when he does make answer the same body that orders his imprisonment orders his discharge. It is by virtue of its order. It is because its order is limited and conditional. He is only to be imprisoned until a certain time, or until a certain event; and when that time arrives or that event happens the same authority that orders his imprisonment orders his discharge.

How is it in the case of courts? There is no difference between courts and legislative bodies on this question. A master commissioner in chancery is appointed to take testimony. He is appointed to take testimony during the session of the court, and perhaps through the whole vacation between the terms of the court. He reports to the court that a certain witness refuses to answer a question and the court find the fact to be so, and the witness fails to purge himself of the contempt. What does the court do? It orders that man into custody until he answers that question before the master. Although the term may adjourn that very day or the next day, the man goes into imprisonment until he answers that question before the master who sits in vacation. That is a thing of common occurrence. It has occurred a hundred times, perhaps, within less than a century in this very country. It is a common occurrence. Take the case that has attracted so much attention in New York, the case of the recent command to officers of the Erie Railroad Company to deposit certain books and papers with a receiver of the United States circuit court. What did the court do? The court ordered the contumacious party to be imprisoned until he did deliver the books, without any reference whatsoever to the sessions of the court, but he was to deliver them to a certain designated person; and whenever he should deliver them to that person, then the same authority that ordered his imprisonment ordered his discharge, for the event had happened upon which his discharge was to take place.

Another reason for this rule is, that the refusal of a witness to answer is a continuing offense. It is not his refusal to-day at all; it is a continuing offense. Every day that he refuses to answer is a continuation of his first offense, and for that reason also the rule to which the Sena-

tor from Massachusetts refers does not apply. In fact, when Cushing is speaking here in the passage which the Senator read, he is speaking of imprisonment by way of punishment, and of nothing else, for it is one hundred pages or more after that when he takes up the question of a witness refusing to answer. What he is speaking of here, when he says the imprisonment must end with the session, is where the imprisonment is a definite punishment for an offense committed, and not an imprisonment, as a means of compelling a witness to answer. That is the authority which has been produced, and a hundred pages after that he comes to the consideration of the question, what is to be done with a witness who refuses to answer?

Mr. President, perhaps on this subject the whole argument is in a nutshell. Has this Senate authority to appoint a committee and authorize it to sit during vacation? If it has no such authority, then any witness who commits perjury before such a committee is not liable to any punishment at all, for the committee had no jurisdiction. Is that so? Your Committee on Retrenchment, under your rule, before you ceased to appoint it, while it existed, had authority to sit anywhere within the United States during the vacation and to take testimony. It did sit for a large portion of the vacation between every session when that committee had an existence. It took vast volumes of testimony. It reported to you about a year ago three or four hundred pages of testimony that it took during the vacation, some in New York, some in San Francisco, and some elsewhere. If a witness had sworn falsely before that committee, was he not liable to be indicted for perjury? He certainly was not liable to be convicted of perjury if this Senate has no power to authorize a committee to sit in the vacation of the Senate.

Mr. PATTERSON. With the Senator's permission, I would like to state a case which came before that very committee, and ask his judgment upon it.

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from New Hampshire?

Mr. THURMAN. Yes, sir.

Mr. PATTERSON. It was brought to the knowledge of the Committee on Retrenchment that there had probably been corruption in one of the Departments of the Government. The Secretary at the head of that Department had been trying for two years to get testimony from a witness residing in Chicago. As chairman of that committee, I was requested to go to Chicago and get that testimony, if possible. On reaching Chicago I took with me a reporter and a police officer and went to the house of the person who had this knowledge, and that person refused to testify until a lawyer could be consulted. I went with him to the lawyer, and the lawyer counseled him not to give the testimony, because he was not obliged to criminate himself.

I read the law which was read here yesterday to the Senate, which showed that a witness could not avoid giving testimony on the ground that it would criminate himself, and also providing that his testimony before the committee should not be used against him in court. Still the lawyer counseled the witness not to testify. I said to both that he could give the testimony or not, as he pleased, but that if he did not give it I would report the case to the Senate of the United States, and that the witness would be put into custody and held there until the testimony was given. And then the testimony was given, which showed that a high officer of the Government had taken \$7,000 to get a case through the Treasury Department.

But now, sir, if witnesses can go scot-free when they refuse to testify before our committees, I want to know what fear or what motive can be brought to bear henceforth on witnesses who may be induced to refuse to testify. There is a case in hand before us. You may say and others may say that the publication of matters before the Senate is a different case from that which I have stated. I do not know but that it is just about as bad for a newspaper to offer money for documents which the Senate has before it in confidence, and which the Senate has refused to give out, especially if that document be a treaty which the Senate has refused to make public—I do not know but that it is as bad for a newspaper to authorize its agents to give \$1,500 for a treaty as it is for an officer of the Government to take \$7,000 to get a claim through. So far as the morality of the thing is concerned, I think there is but little to choose between the two; and I honor these agents more than I do the parties who employ them. They have done little more, I suppose, than all their guild would have done. But, sir, I pity the man who can justify the morality of a public press in endeavoring to corrupt its agents and induce them to steal improper information.

Mr. THURMAN. Mr. President, I was trying to make a close, logical argument of the law; I do not know whether I shall succeed or not; but one thing is very certain—and the instance cited shows the wisdom of the provision—that you can appoint committees to sit in vacation. No one, I think, will dispute that. So you can clothe them with power to take testimony, and if perjury is committed in the giving of that testimony the person giving it can be found guilty of perjury and punished for that perjury in the courts. If a witness refuses to testify, as in the case stated by the Senator from New Hampshire, the Senate would commit that witness. In the case which he mentions, the witness of whom he speaks would have been undoubtedly imprisoned until he did testify if the Senate thought it was a case that required such extraordinary measures. That would be a question for the Senate to decide upon the facts of each particular case.

Well, then, if you can authorize a committee to sit in vacation, and if you say to that committee, "Take testimony on a particular subject," and if that committee, it having been appointed and holding its first session during the session, reports to you that a certain witness has been asked a proper question and refuses to answer it, I do say that it is within the constitutional power of the Senate to say to that committee "Continue to sit," and it is within its constitutional power to say to the witness, "You must be imprisoned until you give that testimony," and when he does give the testimony it is the order of the Senate that discharges him as much as it was the order of the Senate that committed him.

This I take to be the law of the case, and I do not think that any authority has been produced against it. On the contrary, the practice of the courts is so, and so far as I know—at least I know nothing to the contrary—the practice of all legislative bodies is so; for you must all the while remember the distinction, to which I have so frequently called the attention of the Senate, between an imprisonment that is for punishment, and which always is for a definite period, and an imprisonment which is a mere means of compelling a party to obey the law, to perform his duty, to give testimony, to answer a proper question that has been asked him. And really it is of very little force to say, when that case comes toward the close of a session, we can not continue the committee and can not impose the imprisonment until the witness has answered the question.

Mr. President, so much for that. I do not see that much light is shed on this matter by talking about kneeling at the bar of the Senate. That may be a good fact upon which to found a very fine rhetorical sentence or the like; but what in the world has it to do with this question which is now before the Senate as to its constitutional power? Nothing in the world. I am just as much in favor of the amendment of the Senator from Massachusetts as he is, and I so expressed myself. I am in favor of it because I go upon precisely the same ground that is contained in the extract that he read, but which I had read before him, namely, that whenever the question is, shall you proceed with the law to its utmost extremity in order to compel an answer? that is a question which requires most grave and serious consideration. It does not follow at all because you have arrested a witness and brought him to the bar of the Senate that you shall indefinitely confine him in order to make him answer the question. That is a *non sequitur*. For the reasons which I have already stated, and which I will not weary the patience of the Senate with repeating, in my judgment we ought not to exercise our full powers in this case. We ought not indefinitely to imprison this man, for that is what the adoption of the resolution in the form in which it is offered will amount to. We ought not to do that for reasons that it is not necessary at all to repeat. I do think that if these men do not answer before the end of this session we ought not to prolong their imprisonment to an indefinite time. I am therefore in favor of the amendment, but I will not support it on grounds that I believe to be untenable and to be bad law.

Mr. STEWART. Mr. President, I had not intended to say a word on this question, and I do not intend now to prolong the discussion; but it is hard to sit here and not be forcibly impressed with the apparent blindness evinced by some of the arguments that are gravely advanced before the Senate.

It is said that this rule of secrecy is an old rule and an absurd rule, that it works no good purpose, and that it ought to be abolished. That may be true. I am not discussing the propriety of the rule. I never cared much for it; I never prized it very highly, certainly in its practical workings. But Senators should remember that when we come here we come sworn to obey this rule with all other rules of the Senate. Our honor is pledged to each other in as high a degree as it can be under any circumstances that we will observe the rules of the Senate, and the rules themselves denounce against us the punishment of expulsion if we violate this particular rule. Now, is it possible that it can here be defended as morally proper for a Senator to have such relations with a reporter that he can report confidential proceedings here and that there is no power on our part to ascertain that fact? Is that so? If the person called as a witness has the privilege of declining to answer, then the Senator is perfectly safe. If the witness is bound, as it is said he is, by the honorable obligations of his craft; if he would be so degraded by divulging that the punishment would be greater in that direction than any punishment we could inflict, then the Senator who will report our confidential proceedings is held perfectly harmless. That these proceedings are published, that information of them is given out by Senators, is known to every one. If any one reads the newspapers he will ascertain that fact. Besides, such accounts are frequently given out to the prejudice of fellow-Senators.

Now, what will the country think of a Senator, bound by all the obligations of honor and his oath to secrecy, who will have such relations with a reporter that he will not only freely divulge the secrets of

the body, but place his associates in whatever light he sees proper, and often in a false one? What public press or what public sentiment will object to an investigation the result of which may be to break up a practice of that kind, which is a continual punishment to those who seek to be honorable, they paying penalty to a rule under which they are allowed to be misrepresented to any extent? I object to those senatorial reporters. They are not as honorable as the reporters in the gallery; they do not do by their fellows as fairly as the reporters in the gallery do by them when the doors are open; and if under this rule Senators may report us as they please, and there is no remedy for it, I say let us abrogate the rule; but while the rule exists there is nothing that will more tend to promote the public peace than its strict enforcement. Let us know who are honorable here, and who keep the secrets of this body while we have this rule; but do not so construe the rule practically as to stop the mouth of the honorable man from even giving the correct version of what occurs here, while those who are willing to be dishonorable and to betray the secrets of this body can give an untrue and unfaithful version. I say it is unfair.

Now, as to this investigation. I shall not complain of these young men. I do, however, complain of the public press when it says that it is a farce for us to attempt an investigation, that it is a farce for us to attempt to free ourselves from this unjust and humiliating position that every honorable Senator must occupy while he reads in the morning papers the secret proceedings of the Senate on the previous day, distorted as they may be in the publication.

The Senator from Indiana said that the chairman of the committee had gone too far in saying that he believed this would be traced to a Senator. He said that before the chairman made that statement he should have some evidence of it to submit. Why, Mr. President, the chairman of the committee and the committee had witnesses before them who refuse to answer, and the Senator from Indiana argues that the testimony already before them should satisfy the chairman of the committee that he had gone far enough in that direction, and that the Senate is exonerated.

I say there is nothing whatever in this testimony to exonerate the Senate. Let me read what the witness is willing to testify to. I have examined a great many witnesses, and I have observed their cautious language, but in point of extreme caution and in ways provided whereby to escape I never have seen a more artful production than the answer of the witness before us to the last interrogatory which the Senate ordered to be propounded to him at this bar. It beats anything I have ever seen in that line. It is exceedingly artful and well put, and it was all the case he had. Let us examine it:

I am now ready to go before the special committee of the Senate and to testify that neither directly nor indirectly did I receive—

Mark the word “receive”—

the copy of what purports to be the treaty of Washington from any Senator or officer of the Senate, nor, so far as I know, from any employé thereof.

He did not receive it directly or indirectly from a Senator. Of course not. He received it from another man, from a go-between. That is the ordinary way. It is as plain as anything in the world.

Mr. MORTON. Would not that be receiving it indirectly? Suppose he got it from a go-between, would not that be receiving it indirectly?

Mr. STEWART. No; he received it directly from the go-between, not indirectly from anybody. It was in his power to exonerate any Sena-

tor. He could have said: "I got this treaty from another source, distinct from the Senate. I know the source, and I swear that it was from another source, and that it had never been in the possession of the Senate." If he could have said that——

Mr. MORTON. What was the question propounded to him?

Mr. STEWART. He says: "I am now ready to go before the special committee of the Senate and to testify that neither directly nor indirectly did I receive a copy of what purports to be the treaty of Washington from any Senator."

Mr. MORTON. What was the question propounded?

Mr. STEWART. This is his proposition, this is his statement of what he proposes to do.

Mr. MORTON. But it was intended as an answer to a question.

Mr. STEWART. He was asked if he was ready to answer all proper questions.

Mr. MORTON. It was intended as an answer to the amendment of the Senator from Illinois [Mr. Trumbull].

Mr. CARPENTER. He does not say that he is ready to go before the committee and answer all questions touching that thing, but that he is ready to swear in that particular way.

Mr. MORTON. One moment. There has been no objection made that the answer was not full enough. If these verbal criticisms had been brought to the attention of the witness, or if they were now brought to his attention, perhaps he would correct it, but nothing of that kind has been done. The interrogatory propounded by the Chair, according to the direction of the Senate, as amended on the motion of the Senator from Illinois, was this:

Are you now ready to appear before said committee and to answer all proper questions—

I presume when they get him before the committee he will answer all proper questions—

which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate, or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?

Mr. STEWART. "All proper questions." He is asked whether he is ready to answer all proper questions relative to the disclosure of this treaty by the Senate. Any lawyer at all familiar with the rules of investigation knows that you may sift a witness by all legitimate questions tending to arrive at the conclusion. You may ask him who the person was, may you not, from whom he got the paper? Suppose a person had a horse in his possession, and there was a question about the title to it, and he was called upon to give an account of his possession, and he should say: "I can not tell you from whom I got it, but I will say that I did not get it from the man who is on trial." With such a limitation on our investigations, how could we ever discover the truth of any matter of this kind?

The Senator from Indiana is a lawyer, and yet he complains of the statement of the Senator from Wisconsin that he expected to bring this home to a Senator. He complains of him for that statement, and says he ought to produce the proof, while at the same time he takes away from him any right to make any investigation whatever, and he says this ought to be satisfactory! He says it ought to be satisfactory if the witness will state that in the act of receiving this paper he did

not take it from the hands of a Senator or any officer of the Senate; that the committee shall not be allowed to get possession of the other means of information that may lead to a Senator; that they shall not be allowed to ascertain the man who went between the Senator and the witness. Still the chairman of the committee is to be censured on the floor of the Senate for not producing the evidence that leads to a Senator, and yet you will not let him ask and get answers to questions which will produce that proof. That is very singular logic.

The chairman of the committee is not allowed to inquire the name of the party who brought the document to the witness; he is not allowed to ask who it was, so that he can call him and trace it another step; and perhaps it will have to go two or three steps, for in these things the "ways that are dark" are no comparison to it. There is more obscurity than mere darkness.

Then, the Senator from Massachusetts talks about our having no right to imprison the witness because the witness is innocent. Why, sir, in most cases of witnesses they commit no crime. The person who stands by and sees a murder committed, and would have prevented it if he could, is not guilty; and still you will take him from his business, and if he refuses to attend and testify, will put him in jail and keep him there until he testifies for the purposes of justice.

We are not prosecuting these witnesses for crime. We have them here to ascertain the fact whether any Senator has violated his obligation by revealing the secrets of this body. That is what they are here for. We do not propose to apply to them anything but the ordinary means of compelling witnesses to testify. Witnesses are compelled to testify for high reasons of public policy, whether they are guilty or innocent. They are called upon indiscriminately. It is one of the duties of the citizen to come forward in all proper cases where the laws are administered and give his testimony. If there is any punishment inflicted on these witnesses it is self-inflicted punishment. They need not be punished one minute. In five minutes both these gentlemen can be free, and the Senate then can have an investigation that will exonerate the body, and not rest under this grave suspicion which is suggested by the chairman of the committee, that this treaty was given out by some Senator. Does the Senate want to rest under that?

It does seem to me that this matter, after having occupied three days, should result in some good. It should either result in ascertaining the person who gave out the treaty, that he may suffer such disgrace as the development of the fact may produce or such other discipline as the Senate may feel disposed to administer, or it should result in abolishing this rule and freeing us from association with the men who avail themselves of the relation between them and the reporters to report our secret proceedings as they please.

The VICE-PRESIDENT. The Secretary will report the amendment.

The CHIEF CLERK. The amendment is to strike out of the second resolution the following words:

And said committee shall be continued during the recess following the present session, and are hereby authorized to sit during said recess, with all the powers conferred by the original resolution of the Senate under which said committee was appointed.

The VICE-PRESIDENT. The Secretary will call the roll.

Mr. CARPENTER. The Senator from Alabama [Mr. Spencer] desired me to state he was paired with the Senator from Arkansas [Mr. Rice]. Mr. Spencer, if here, would have voted "no," and Mr. Rice "ay."

The question being taken by yeas and nays resulted—yeas, 20; nays, 30; as follows:

Yeas—Messrs. Bayard, Blair, Cragin, Davis of West Virginia, Fenton, Gilbert, Hamilton of Texas, Harlan, Kelly, Morton, Saulsbury, Schurz, Sprague, Sumner, Thurman, Tipton, Trumbull, Vickers, Wilson, and Windom—20.

Nays—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Howe, Logan, Morrill of Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Scott, Stewart, West, and Wright—30.

Absent—Messrs. Brownlow, Cameron, Casserly, Corbett, Hamilton of Maryland, Hill, Hitchcock, Johnston, Kellogg, Lewis, Morrill of Maine, Nye, Pomeroy, Pool, Rice, Robertson, Sherman, Spencer, Stevenson, and Stockton—20.

So the amendment was rejected.

Mr. WINDOM. I offer the following amendment, to come in at the end of the resolutions:

And that said committee shall be required to remain in continuous daily session in the city of Washington until said witness shall come before them and purge himself of said contempt.

Mr. President, a single word in explanation of the amendment. The Senate was informed by the honorable chairman of this committee that if these resolutions were passed the witness would have the keys of his imprisonment in his own pocket and could come out any time he chose. Certainly it seems to me that if this committee is to separate as soon as the Senate adjourns these keys will not be very conveniently at hand. If we are going to appoint, as we already have, as I understand it in plain English, appointed this committee of five honorable Senators to act as jailors for this witness during the recess of the Senate, those jailors should be on hand so that at any moment the witness desires to purge himself of this contempt he may be able to do so. I believe that the Senate has not the power to imprison the witness a single hour after he is ready to purge himself of that contempt, and I see no other way in which we can avoid this difficulty but to keep the committee in continuous session.

Now, sir, I do not desire to prolong this debate, for I am very anxious, indeed, that the little unimportant matter that we have come here for should be considered. When I received the information, fifteen hundred miles from here, that the President had important business which he desired to present at an extraordinary session of the Senate, I did not imagine that that business would detain us at least a full week in discussing the question of our own dignity and our own courage. I believe, sir, that true courage and true dignity consist in doing our duty and doing it fearlessly. I have no questions to raise as to the courage of the gentlemen who were on either side of this question; but for one I believe, although I do not claim to be very competent to judge on that subject, that the dignity of the Senate would be far better conserved if these witnesses were turned over to the law which we have provided for the punishment of this kind, rather than that the Senate should remain longer in session discussing its own dignity and its own courage. I hope my amendment will prevail.

Mr. MORTON. I desire to make one suggestion simply on this amendment. As the resolution now stands it is equivalent to the confinement of these men until next winter. It provides that the committee shall be continued, but it does not provide that they shall remain here. The Senator from Wisconsin, the chairman of it, lives a thousand or twelve hundred miles away.

Mr. FRELINGHUYSEN. Will the Senator permit me to interrupt him a minute? I do not know that there is anything in this resolution that says they shall remain in prison. I have not noticed anything in the resolution which says they shall remain in prison or in confinement of any kind.

Mr. MORTON. I will state what it does say. It says that——

Mr. CARPENTER. The Senator will pardon me a moment——

Mr. MORTON. I would like to read the resolution. I said that in effect it so provided, and so I say still. It provides that they can only be discharged from imprisonment by coming before the committee and testifying; but if the committee is not here how can they get before it? There is nobody authorized to call the committee together but the chairman himself, and it leaves the liberty of these men until next winter in the hands of the chairman of that committee, and if he should issue a call for the committee to meet here and it was not convenient, if one of them was in California or another had gone to Europe, or it turned out that you could not get a majority of the committee here, they cannot come before the committee as such and testify, and they must remain here until the Senate discharges them. That is the legal effect of it; there cannot be any disguise about it.

The yeas and nays were ordered; and being taken, resulted—yeas 20, nays 31; as follows:

Yeas—Messrs. Bayard, Blair, Casserly, Cragin, Davis of West Virginia, Fenton, Gilbert, Hamilton of Texas, Hill, Morton, Saulsbury, Schurz, Sprague, Sumner, Thurman, Tipton, Vickers, West, Wilson, and Windom—20.

Nays—Messrs. Ames, Anthony, Boreman, Buckingham, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Harlan, Howe, Logan, Morrill of Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Scott, Stewart, Trumbull, and Wright—31.

Absent—Messrs. Brownlow, Cameron, Corbett, Hamilton of Maryland, Hitchcock, Johnston, Kellogg, Kelly, Lewis, Morrill of Maine, Nye, Pomeroy, Pool, Rice, Robertson, Sherman, Spencer, Stevenson, and Stockton—19.

So the amendment was rejected.

Mr. CARPENTER. There are two verbal amendments I desire to have made in the recitals. Where it is recited that the Senate gave leave to answer, the words "in writing" are used. Those words should be stricken out. And then "the Territory of Columbia" should be "the District of Columbia." I supposed the late act changed the title of the District, but I am informed by the Senator from Ohio that it did not.

The VICE-PRESIDENT. Is there objection to these modifications? The Chair hears none. The Senator from Ohio [Mr. Thurman] demands the reading of the resolution.

Mr. THURMAN. I do not care about the preamble, but only that part which relates to the imprisonment.

Mr. CARPENTER. There two resolutions.

The VICE-PRESIDENT. They will be read.

The Chief Clerk read as follows:

Be it resolved, That the said Z. L. White be committed to the custody of the Sergeant-at-Arms, to be kept by him in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and appear before said committee and answer such proper questions as may be propounded to him by said committee; and for the commitment and detention of the said Z. L. White this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having said Z. L. White in custody shall be informed by said White that he is ready and willing to answer as aforesaid, it shall be the duty of said officer to bring him before said committee; and if he shall duly answer all proper questions put to him by the said committee, said committee shall cause him to be discharged from custody; and said committee shall be continued

during the recess following the present session, and are hereby authorized to sit during said recess, with all the powers conferred by the original resolution of the Senate under which said committee was appointed.

Mr. THURMAN. I move to add at the end of the first resolution this proviso:

Provided, Such imprisonment shall not continue longer than twenty days from this date.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Ohio.

The yeas and nays were ordered; and being taken, resulted—yeas 20, nays 32; as follows:

Yeas—Messrs. Bayard, Blair, Cragin, Davis of West Virginia, Fenton, Gilbert, Hamilton of Texas, Harlan, Hill, Kelly, Morton, Saulsbury, Schurz, Sprague, Sumner, Thurman, Tipton, Vickers, Wilson, and Windom—20.

Nays—Messrs. Ames, Boreman, Buckingham, Caldwell, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Connecticut, Ferry, of Michigan, Flanagan, Frelinghuysen, Hamlin, Howe, Logan, Morrill of Vermont, Osborn, Patterson, Pratt, Ramsey, Sawyer, Scott, Stewart, Stockton, Trumbull, West, and Wright—32.

Absent—Messrs. Anthony, Brownlow, Cameron, Corbett, Hamilton of Maryland, Hitchcock, Johnston, Kellogg, Lewis, Morrill of Maine, Nye, Pomeroy, Pool, Rice, Robertson, Sherman, Spencer, and Stevenson—18.

So the amendment was rejected.

Mr. THURMAN. I offer this proviso, to come in at the end of the second resolution:

Provided, That if at any time said committee shall fail to hold a session at Washington City for the space of one week and to give notice thereof to said White, it shall be the duty of the Sergeant-at-Arms to discharge him from custody.

The VICE-PRESIDENT. The question is on this amendment of the Senator from Ohio.

Mr. CONKLING. Do not let us vote under a misapprehension. This amendment provides that the committee shall meet once a week, however futile and absurd it may be; not that they shall meet as they would, of course, when notice is given, but simply that the committee shall be punished by meeting for nothing once a week.

Mr. MORTON. One word. As the resolution now stands, it provides that these gentlemen may be committed to prison and be held there until next winter, because the committee do not meet at all during the vacation. There is no obligation upon them to meet.

Mr. CONKLING. I will not say that the Senator from Indiana makes that assertion a second time in the face of reason or common sense, because it might not be courteous to him to say that. I do say, however, that he makes it without anything in fact or reason, in my judgment, upon which to found it. He stated at last all that the facts would bear of statement when he said that there was committed to the chairman of the committee the discretion of calling the committee together. So much might be warranted in saying; but when he assumes either that any chairman of a committee, but especially that our honored associate, the chairman of this committee, would be so recreant or inhuman as not to convene the committee, or when he assumes that the committee thus convened would refuse or neglect to respond to the summons, then I submit to him, not meaning to be discourteous, that he carries the argument so far that it has no probability to rest upon.

Mr. MORTON. Mr. President, in reply to that I have simply to repeat that this resolution does not make it obligatory or even suggest that

this committee shall meet between the adjournment of this session and the beginning of the next. I have not assumed that the Senator from Wisconsin would not call the committee together. I have said it was left in his power and discretion; and can that be denied?

Mr. CONKLING. No, Mr. President. It is in my power to go stealthily behind the honorable Senator from Indiana and inflict an injury upon him. He does not suppose I would do it. So it is in the power of the Senator from Wisconsin to do many a thing which he ought not to do and which therefore we know he would not do; and upon the same reasoning it is in his power to commit an enormity or an omission so flagitious as would be this; but he never will do it, as we know, unless we are to reverse the presumption applicable at least to public officers that they will do their duty in place of violating their duty. That is the answer to it.

Mr. SCOTT. I offer as a substitute for this amendment the following:

If said committee shall fail to meet for ten days after the chairman shall have been notified by the officer in charge of such witnesses that they are, or that either of them is, willing to answer the questions they have heretofore refused to answer, then such witnesses shall be discharged.

Mr. CONKLING. That is fair.

Mr. CARPENTER. That I will accept.

Mr. EDMUNDS. It cannot be accepted, because it is a substitute for the other amendment.

Mr. THURMAN. Let me call the attention of the Senator from Pennsylvania, as he wants it in proper form, to the fact that the resolution now under consideration relates to one witness. His proviso relates to two.

Mr. CONKLING. It can be changed in that respect.

Mr. SCOTT. I was under the apprehension that the resolution applied to both witnesses. If it applies to but one, let the language of my amendment be put in the singular.

The VICE-PRESIDENT. No answer has yet been made by Mr. Ramsdell, and his case is not before the Senate.

Mr. WINDOM. I desire to ask the Senator from Pennsylvania a question, whether his amendment would not detain the witness ten days after he was ready to purge himself of contempt?

Mr. SCOTT. That would be only a reasonable time for assembling the committee, and it will always be in the witness's own discretion to determine how long his imprisonment shall continue.

The VICE-PRESIDENT. The Secretary will report the amendment of the Senator from Ohio, and then the proposed substitute of the Senator from Pennsylvania.

The CHIEF CLERK. The amendment of the Senator from Ohio [Mr. Thurman] is to insert as a proviso at the end of the second resolution:

Provided, That if at any time said committee shall fail to hold a session at Washington City for the space of one week, and to give notice thereof to said White, it shall be the duty of the Sergeant-at-Arms to discharge him from custody.

The amendment of the Senator from Pennsylvania is to strike out all after the word "provided" and insert:

That if said committee shall fail to meet for ten days after the chairman shall have been notified by the officer in charge of said witness that he is willing to answer the questions he has heretofore refused to answer, then said witness shall be discharged.

Mr. CONKLING. "And other proper questions;" not only the questions he has heretofore refused to answer, but other proper questions.

Mr. SCOTT. Yes; put it in that form.

The VICE-PRESIDENT. The Secretary will write out the proposition; and as it affects the liberty of a citizen, he will read it again, before it is voted upon, to the Senate, so that it shall be specifically understood.

Mr. HILL. I suggest to the Senator from Pennsylvania whether he had not better point out in his proposition some mode for giving notice to the committee. Are they to be notified at their homes; or, if not there, where? I suppose they are not expected to stay at home all the time waiting for the notice.

Mr. EDMUNDS. I suggest to the Senator from Georgia that that could be arranged by providing in the resolution that the committee should attend at the office of the Sergeant-at-Arms at all times to be ready to receive the notice. [Laughter.] They might be committed with the prisoner.

Mr. HILL. I thought something similar to that had been voted down. If the Senator wishes to make that proposition he can do so. [Laughter.] I do not intend to do it myself. I thought perhaps there was some understanding about this matter. We do not expect the Sergeant-at-Arms to go to the houses of the members of this committee.

Mr. CONKLING. We might put in, as is done in regard to absconding debtors, that the notice should be left at the last or usual place of abode.

Mr. HILL. That might do; it might suit very well during the summer, for there is no telling where you will find a man during the dog-days.

The VICE PRESIDENT. The Secretary will now report the substitute of the Senator from Pennsylvania as it has been modified, and he will see whether it is exactly in the form which he desires.

The Chief Clerk read as follows:

Provided, That if said committee shall fail to meet for ten days after the chairman shall have been notified by the officer in charge of said witness that he is willing to answer the questions he has heretofore refused to answer, and other proper questions, he shall then be discharged.

Mr. MORRILL, of Vermont. I suggest that there should be a grammatical correction there: "Provided that the officer shall be notified that said witness is willing to testify," etc. It now reads that the officer is willing.

Mr. SCOTT. It is that the officer shall notify the chairman of the committee.

The VICE-PRESIDENT. The Senate will see the correctness of the suggestions from the Chair that this matter should be distinctly understood by every Senator before it is voted upon. The Senator from Vermont has made a suggestion; does the Senator from Pennsylvania accept it?

Mr. SCOTT. The Senator from Vermont is mistaken in making the suggestion. The intention of the amendment is that the officer shall notify the chairman of the witness's willingness to testify.

Mr. MORRILL, of Vermont. It reads thus: "shall be notified by the officer in charge of said witness that he is willing."

Mr. CONKLING. He, the witness.

Mr. MORRILL, of Vermont. Then put that in.

The VICE PRESIDENT. Does the Senator from Pennsylvania accept the modification or not?

Mr. SCOTT. I will certainly accept any modification that will clear up the intent.

The VICE-PRESIDENT. The Senator must decide for himself whether he does or does not accept it.

Mr. CONKLING. Allow me to make a suggestion. Just change it so as to say, "shall be notified of the willingness of the witness to answer."

Mr. MORRILL, of Vermont. That will do.

The VICE-PRESIDENT. Does the Senator from Pennsylvania accept that?

Mr. SCOTT. I accept that.

Mr. MORTON. It provides that he shall be notified that the witness is willing to answer the questions which the Senate have decided he shall answer, "and other proper questions." In other words his liberty is to be made to depend on answering questions that have not yet been propounded to him and that this Senate has never decided he should answer.

Mr. CONKLING. Oh, no, Mr. President, if the honorable Senator will pardon me; that is the effect of the resolution now. This part of the resolution is simply to convene the committee, the Senator will see, and that convention occurs when the witness shall say that he is ready to answer. The objection which the Senator makes resides, if at all, in the resolution now, not in that part which the honorable Senator from Pennsylvania proposes to add. That is simply as to an indication of the witness upon which the committee shall be summoned.

Mr. EDMUNDS. I suggest to my friend from Indiana that there is no objection on that particular score even from his point of view, because if the witness answers those questions which have been decided to be proper he has purged his contempt. If he also expresses a willingness to answer any other proper questions, when he is called upon to answer a further question, and he decides that it is a question which he is not bound to answer or will not answer, the committee can not hold him at all.

Mr. CONKLING. Not at all.

Mr. EDMUNDS. It only shows his state of mind.

Mr. MORTON. I will ask to have the resolution read again. I think it states that when he shall signify his willingness to answer the questions already propounded and which the Senate has decided he shall answer, and his willingness to answer other proper questions——

Mr. CONKLING. Then what? Then the committee shall come here.

Mr. MORTON. But if he does not say he will answer other questions that have never been propounded the committee is not to come. I ask that it be read.

The VICE-PRESIDENT. It will be again read as modified.

Mr. MORTON. The substitute of the Senator from Pennsylvania is what I want to have read.

The Chief Clerk read the amendment of Mr. Scott in these words:

Provided, That if said committee shall fail to meet for ten days after the chairman shall have been notified by the officer in charge of said witness of the willingness of the witness to answer the questions he has heretofore refused to answer and other proper questions, he shall then be discharged.

Mr. MORTON. My objection is well taken. He must express his willingness not only to answer the questions for refusing to answer which he is held in contempt, but "other proper questions" that have never yet been proposed to him.

Mr. EDMUNDS. Certainly, and so he ought; that is, he ought to express his willingness to obey the law. Then when it comes to the question of whether he does answer a proper question afterward, that is a point which the committee cannot determine. If he answers the questions that the Senate have provided for, he is then the judge for

the time being of what is proper, and the committee cannot imprison him after that; and everybody knows it.

Mr. THURMAN. That depends on the terms of the resolution offered by the Senator from Wisconsin. I ask that that be read.

The VICE-PRESIDENT. The Secretary will report the resolution of the Senator from Wisconsin. Does the Senator from Ohio desire the whole resolution to be read?

Mr. THURMAN. The resolution without the recitals, and let us see whether it is sense without them.

The resolutions were read.

Mr. THURMAN. Now the Senator, from Indiana is entirely right. Instead of the resolution reading "until he has answered the questions which the Senate has decided are proper questions," it puts it wholly in the discretion of the committee to determine whether the questions that it asks are proper questions or not; and although the Senate when the matter should come before the Senate, might be of a wholly different opinion, this man must remain in custody until next December. I say the Senator from Wisconsin ought to modify his resolution.

Mr. CONKLING. That objection, the Senator will see, does not arise at all upon the pending proviso, but, as I said before, the objection resides, if at all, in the resolution itself.

Mr. THURMAN. That is what I am saying.

Mr. CONKLING. And therefore the pending proviso has nothing to do with it.

Mr. THURMAN. I say it does reside in the original resolution, and that is the reason I asked to have it read. And I want to call the attention of the Senate to it now. Of course if the resolution were corrected in that respect the Senator from Pennsylvania would correct his proviso.

The VICE-PRESIDENT. The yeas and nays have been ordered on the substitute of the Senator from Pennsylvania for the amendment of the Senator from Ohio.

Mr. SAULSBURY. I wish to make one suggestion in reference to this matter. I think the language of the proviso would imply that the witness should be kept in custody until notice is brought home to the chairman of the committee. The language of it is that he shall not be discharged until ten days after notice shall have been given. The Sergeant-at-Arms in the first place, having the party in custody, has the means within himself of withholding information from the chairman of the committee. That is the first objection I make to the proviso. The second is that the information is to be communicated to the chairman of the committee, and if the chairman should be in Europe or in California or in any other section of the world the Sergeant-at-Arms would have no right to discharge the party from custody until he should be satisfied that the information had been carried home to the chairman of the committee. I therefore hope that the proviso of the Senator from Pennsylvania will not be in its present form adopted. I much prefer the amendment of the Senator from Ohio.

Mr. THURMAN. I suggest to the Senator from Pennsylvania that instead of saying "the chairman of the committee" he say "any member of the committee."

Mr. CONKLING. Say "all the members of the committee."

Mr. THURMAN. No, not all, because that would be liable to the same objection suggested by the Senator from Delaware, which strikes me with great force.

Mr. SCOTT. I have no objection to any modification that will carry out the practical purpose, and therefore I will put my amendment in

this shape: "to the chairman of the committee," or, if it be impossible to reach him, "any other member of the committee."

The VIC-PERESIDENT. The Secretary will reduce the proposition to writing and report it to the Senate.

Mr. CASSERLY. Mr. President, I thought in the beginning, when I heard the amendment of the Senator from Pennsylvania directly in front of me read, that the notice to be given by the witnesses in custody should be to their custodian; that is, the Sergeant-at-Arms. He is the officer of the Senate. He holds them for any period, short or long, for which he shall hold them, as the officer of the Senate. I do not think that persons in custody should be charged with any duty to give notice to anybody except the officer who holds them in custody.

Mr. CONKLING. That is the proposition, simply that they shall give notice to him and he gives the notice to the committee.

Mr. CASSERLY. They ought not to be chargeable with any laches of the officer who has them in keeping. When they have notified him of their readiness the time ought to begin to run; and the objection seems to me unanswerable that otherwise persons in custody may be compelled to give notice to a member of the committee who may not be, to use the old expression, "within the four seas," or may not be within either ocean that washes the United States. I trust my friend, the Senator from Pennsylvania, will agree to that. It seems to me a very manifest view. Otherwise I shall certainly be compelled to vote against his proposition. It will be sufficient if they notify the Sergeant-at-Arms.

As I am on my feet I desire to ask the Senator from Indiana how far he considers or in what way he considers his statement justified that during the recess these witnesses may be committed to jail. All I know on that point is, that awhile ago I aided to vote down that distinct proposition.

Mr. MORTON. I did not say "to the jail."

Mr. CASSERLY. I understood the Senator so.

Mr. MORTON. I said "prison." I suppose they could be imprisoned by the Sergeant-at-Arms.

Mr. CONKLING. "Custody" he meant.

Mr. CASSERLY. I think that is a very different thing.

Mr. MORTON. The resolution says, "in close custody." I suppose that is a very definite phrase.

Mr. CASSERLY. I think any of us might go into the custody of the Sergeant-at-Arms without coming under any indignity; but that is a very different thing from going to prison or jail.

The VICE-PRESIDENT. The Secretary will now report the substitute as again modified.

Mr. SCOTT. So many suggestions have been made that in the effort to meet them all, if the Senate will consent, I will substitute this for my other proposition.

Mr. CONKLING. You have a right to modify your own amendment.

The VICE-PRESIDENT. The Senator from Pennsylvania withdraws his substitute and offers another in lieu of it.

Mr. SCOTT. I offer the following:

Provided, That if said committee shall fail to assemble within ten days after said witness shall notify the Sergeant-at-Arms of his willingness to answer the questions he has heretofore refused to answer, and such other proper questions as shall be propounded to him, then he shall be discharged.

The VICE-PRESIDENT. The question is now on the substitute as modified by the Senator from Pennsylvania as an amendment to the proposition of the Senator from Ohio. The yeas and nays were called upon

it before it was modified. Are the yeas and nays still insisted upon?

Mr. FENTON. I do not ask for the yeas and nays on this substitute to the proviso of the Senator from Ohio.

The VICE-PRESIDENT. The Chair, then, will first take the sense of the Senate by the sound. Any Senator can call for the yeas and nays afterward. The question is on the substitute of the Senator from Pennsylvania for the amendment of the Senator from Ohio.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The question recurs on the amendment of the Senator from Ohio as modified by the adoption of this substitute.

Mr. CONKLING. I beg to suggest to the Senator from Pennsylvania, if he will give me his attention, that now to prevent all possible doubt about this these words be added:

And it shall be the duty of the Sergeant-at-Arms forthwith, upon receiving information from the said White of his willingness, to inform every member of the same.

The VICE-PRESIDENT. The amendment of the Senator from Ohio has all been stricken out and the substitute of the Senator from Pennsylvania adopted as an amendment to an amendment. The question now recurs upon it as an amendment to the original resolution.

The amendment was agreed to.

The Chief Clerk read as follows:

Be it resolved, That the said Z. L. White be committed to the custody of the Sergeant-at-Arms, to be kept by him in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and appear before said committee and answer such proper questions as may be propounded to him by said committee; and for the commitment and detention of the said Z. L. White this resolution shall be a sufficient warrant.

Mr. THURMAN. It is the second resolution which I wish to amend.

The first resolution reads in these words:

That the said Z. L. White be committed to the custody of the Sergeant-at-Arms, to be kept by him in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and appear before said committee and answer such proper questions as may be propounded to him by said committee; and for the commitment and detention of the said Z. L. White this resolution shall be a sufficient warrant.

The second resolution is:

Resolved, That whenever the officer having said Z. L. White in custody shall be informed by said White that he is ready and willing to answer as aforesaid, it shall be the duty of such officer to bring him before said committee; and if he shall duly answer all proper questions put to him by the said committee, said committee shall cause him to be discharged from custody.

That raises exactly the objection stated by me. I ask my friend to limit that to questions which the Senate has decided to be proper, so as to read, "if he shall answer the questions reported by the committee to the Senate, and which the Senate have directed him to answer."

Mr. CONKLING. And refuse to answer any other questions?

Mr. THURMAN. The confinement is not to continue one minute after he has answered the questions which the Senate has decided to be proper. I move to strike out the words, "all proper questions put to him by the said committee," and in lieu thereof to insert "shall duly answer the questions which the said committee have reported to the Senate, and which the Senate have decided he shall answer." I can put it in writing.

The VICE-PRESIDENT. The Senator from Ohio will be kind enough to put his amendment in writing.

Mr. CONKLING. I suggest to the Senator in the meanwhile that he can save some writing by not reciting all he has said, but simply

saying, "the questions reported to the Senate." Of course those that have already been answered, there can be no objection to answering again and no motive for answering again; so that if he says "questions reported to the Senate" he will answer his purpose.

Mr. SAULSBURY. I move to amend the first resolution by striking out the word "close" before the word "custody."

The VICE-PRESIDENT. That will be in order after the pending amendment is disposed of. The pending question now is on the amendment offered by the Senator from Ohio.

Mr. THURMAN. I move to strike out the words "all proper questions put to him by the said committee," and insert in lieu thereof these words "the questions reported to the Senate, and which he has refused to answer, though directed by the Senate to answer the same."

The VICE-PRESIDENT. The Senator from Ohio moves to strike out of the second resolution the words indicated by him, and insert the words which he has read.

Mr. CARPENTER. I think that amendment is proper. I accept it.

The amendment was agreed to.

The VICE-PRESIDENT. The Senator from Delaware [Mr. Saulsbury] now moves to strike out the word "close" before the word "custody" in the first resolution, so that it will read "in custody."

Mr. CARPENTER. I hope that will not be done. If there is any difference between "custody" and "close custody," what is required is close custody.

Mr. MORTON. If there is no difference, let it be stricken out.

Mr. CONKLING. Yes; there is a difference.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Delaware, to strike out the word "close;" so as to read "in custody."

The amendment was rejected; there being, on a division—ayes 18, noes 28.

The VICE-PRESIDENT. The Senator from New York [Mr. Conkling] indicated an amendment. Does he desire to offer it?

Mr. CONKLING. I care not to which resolution it is offered. I will offer it to the second resolution if the Chair will be kind enough to let the question be taken on the first now.

The VICE-PRESIDENT. If a division is demanded, the question must first be taken on the resolutions separately and then on the preamble subsequently.

Mr. SUMNER. I will make one inquiry on this resolution. I should like to know of the Senator from Wisconsin whether he proposes to proceed against the correspondents of the New York Herald.

Mr. CARPENTER. I should like to put that question to the Senator from Massachusetts, who is a member of the committee, whether he proposes to do it. [Laughter.]

Mr. SUMNER. What I am about to say I think the Senate will find proper. I know it is in order. I am a subscriber to the New York Herald, and have been for many years, and my copy last night contained what purported to be the protocols. Looking at them I am free to confess they had to me a very familiar look. That is all I venture to say. They were described as "the protocols." If the Tribune has offended against the rules of the Senate, so has the New York Herald. And now, sir, I have to submit that this proceeding should not be confined to one newspaper. If it is to be regarded as a punishment, I object to its falling alone upon the Tribune. If it is to be regarded as an advertisement, I claim something of that advertisement for the

Herald. [Laughter.] I think the Senate should not advertise one paper alone. It ought to advertise all that are in the same condition, *in casu consimili*. It is plain, unless I am entirely mistaken from the hasty glance I gave to the Herald last night, that the Herald is now in precisely the same predicament with the Tribune.

Mr. CARPENTER. If my friend will allow me, I take it, with that statement he will feel bound to present that subject to the committee.

Mr. SUMNER. I feel bound to present it to the Senate now. That is my present point, because I wish the Senate to take notice that what ever they do to the Tribune, whether in the way of punishment or in the way of advertising, they ought to do for the other paper also—that is all; and I use it as an argument against proceeding any further in this business. I would not advertise the Tribune any more; I would not punish the Tribune any more; but if you persist in advertising it, and if you persist in punishing it, I think you must do likewise with the other paper.

Mr. THURMAN. Will the Senator allow me to make a suggestion to him?

Mr. SUMNER. Certainly.

Mr. THURMAN. I suggest to him that the case against the Herald is rather stronger than against the Tribune, for the Department never published a synopsis of the protocol, nor has the President, so far as I know, ever indicated a desire to have it published.

Mr. SUMNER. No. The case against the Herald is much stronger. Clearly the Herald should be proceeded with on the precedent we are establishing to-day.

Mr. HARLAN. What is the precise question now pending?

The VICE-PRESIDENT. The resolutions and preamble are now before the Senate. The Senator from New York [Mr. Conkling] indicated a desire to have a division. In that case the resolutions will be considered separately and then the preamble subsequently.

Mr. CONKLING. If the Chair and the Senator will pardon me, I will now send to the desk the amendment which I offered.

The VICE-PRESIDENT. The Senator from Iowa is now entitled to the floor. Does he yield?

Mr. HARLAN. I intended to offer an amendment to the resolution.

The VICE-PRESIDENT. The Chair recognizes the Senator from Iowa if he claims the floor.

Mr. CONKLING. I have no objection. This is an amendment indicated before, which I think ought to go with the amendment already adopted.

The VICE-PRESIDENT. Does the Senator from Iowa yield?

Mr. HARLAN. I will hear the proposition read.

The Chief Clerk read the amendment of Mr. Conkling, as follows:

And it shall be the duty of the Sergeant-at-Arms forthwith, when informed of the readiness of said White to appear and answer as aforesaid, to notify every member of the committee thereof.

The amendment was agreed to.

Mr. HARLAN. I desire to have this resolution modified by striking out the substance of the resolution as it now stands down to that part of it which authorizes the committee to sit during the recess of the Senate, and I have framed my amendment after a similar resolution which was adopted in the House of Representatives in January, 1857, when another case was pending something similar to this, but of much more gravity. The subject of inquiry on that occasion in the other branch of Congress was a case of bribery of members, in which a

witness by the name of J. W. Simonton refused to disclose certain facts that the committee thought he ought to disclose. They reported the facts to the House, and a resolution quite similar to that introduced by the chairman of our committee on this occasion was introduced into that branch of Congress proposing to imprison in the common jail the contumacious witness; but after considerable discussion the House finally concluded that the following was all that was proper in that case. The proposition was offered by Mr. Orr:

J. W. Simonton having appeared at the bar of the House according to its order and the cause assigned for the said contempt being unsatisfactory: Therefore,

Resolved, That the said J. W. Simonton be continued in close custody by the Sergeant-at-Arms, or, in his absence, by Mr. William G. Flood, during the balance of this session, or until discharged by the further order of the House, to be taken when he shall have purged the contempt on which he was arrested by testifying before the committee.

The occasion of that investigation was much more grave than this; it affected much more deeply the honor of the members of that branch of Congress; and yet, after full discussion, a majority of the Representatives of the people did not deem it proper to imprison the contumacious witness in the county jail, nor in the custody of the officers of the House beyond the close of the session. Now, I inquire of my associates in this Chamber if there is any reason involved in this case requiring a more severe course? The subject of the inquiry is not so grave as the other. The offense committed by the witness, technically considered, is precisely the same—the refusal to answer a proper question.

Mr. HOWE. Will my friend allow me to ask him a question for information?

Mr. HARLAN. Certainly.

Mr. HOWE. I should like to know whether the history of that case shows whether Simonton was discharged before answering one of the questions.

Mr. HARLAN. I have not read the whole of the history of the case as recorded in the Globe. I will refer my honorable friend to the Globe and he can look it up.

Mr. CONKLING. Why not have it read at the desk? There is nothing else to do. Let it be read through.

Mr. HARLAN. I prefer not to have that done until the Senator from New York has taken the floor, and then if he wishes to have this volume of the Globe, or any portion of it, read, he may do so.

Mr. CONKLING. When I do it will be merely for one reason, which will be to hasten and facilitate the dispatch of that business which the Senator has in charge. I mean the treaty supposed to be pending. With a view to save time for that I may read the whole of it.

Mr. HARLAN. It is unnecessary for me to remind the honorable Senator from New York that I think he voted against my motion to proceed to the consideration of that business and has insisted on continuing the consideration of the present business.

Mr. CONKLING. Will my honorable friend allow me to remind him of a corresponding circumstance, which is, that I have not occupied one moment in this debate, having become quite early content with repeated votes of the Senate by yeas and nays, showing its determination on this question? If my honorable friend has taken no part with the minority, under whose administration about three days have gone, then, I think, we are a good deal alike; but what the resemblance is and what the difference is he knows as well as I do.

Mr. HARLAN. I shall not compare proprieties with the honorable Senator from New York.

Mr. CONKLING. Oh, no; it is not a question of propriety.

Mr. HARLAN. I suppose he follows that course which he deems it is his duty to pursue as a member of this body. I am doing precisely the same.

Mr. CONKLING. No doubt of it.

Mr. HARLAN. Following my own judgment as the standard of the propriety of what I am doing.

Mr. CONKLING. Nobody is complaining.

Mr. HARLAN. I was about to observe, Mr. President, that when this judgment was arrived at by the immediate and direct representatives of the people in a case entirely similar there was, I think, no law providing for the punishment of a contumacious witness, a witness who had refused to testify before a committee of Congress, by the courts of the country. As there was no other mode of punishment, if more severe measures than those that I have indicated would be proper at all, they would have been proper in that case. But succeeding this investigation Congress provided that whatever measure of punishment should be inflicted should be arrived at by a jury of the countrymen of the contumacious witness.

Now I think it would be well for the Senate of the United States to follow this precedent and mete out no greater measure of restraint than would be meted out by the people themselves, as indicated by their immediate representatives, and leave the people, under the law as administered by the courts, to punish the crime that this witness has committed. I think this would be wise; and now I shall approve the reproof administered by the honorable Senator from New York to me for consuming one moment of time; but I would prefer to have it applied to every member of this body who has insisted on consuming three days with this investigation. More than seventy million people are now waiting to know what the Senate of the United States will authorize this Government to do with questions that may involve peace or war between two nations, and here we stand day after day, with what as compared with that will be regarded by those whom we represent as of very trivial consequence. With this I will close my remarks and offer the amendment.

I move to strike out all that part of the resolutions down to the clause which authorizes the committee to sit during the recess of the Senate, and to insert in lieu of the words stricken out the following:

Z. L. White having appeared at the bar of the Senate according to its order, and the clause assigned for said contempt being unsatisfactory: Therefore,

Resolved, That the said Z. L. White be continued in custody by the Sergeant-at-Arms during the balance of this session, or until discharged by the further order of the Senate, to be taken when he shall have purged the contempt on which he was arrested by testifying before the committee.

Mr. EDMUNDS. We have voted down that proposition in substance three or four times already.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Iowa.

Mr. HARLAN. I ask for the yeas and nays.

The yeas and nays were ordered.

The question being taken by yeas and nays, resulted—yeas 13, nays 28; as follows:

Yeas—Messrs. Bayard, Davis of West Virginia, Fenton, Gilbert, Hamilton of Texas, Harlan, Hill, Morton, Saulsbury, Sprague, Tipton, Vickers, and Windom—13.

Nays—Messrs. Ames, Boreman, Caldwell, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Howe, Logan, Morrill of Vermont, Osborn, Patterson, Pratt, Scott, Stevenson, Stewart, Stockton, Trumbull, West, and Wright—28.

Absent—Messrs. Anthony, Blair, Brownlow, Buckingham, Cameron, Corbett, Cragin, Ferry of Connecticut, Hamilton of Maryland, Hamlin, Hitchcock, Johnston, Kellogg, Kelly, Lewis, Morrill of Maine, Nye, Pomeroy, Pool, Ramsey, Rice, Robertson, Sawyer, Schurz, Sherman, Spencer, Sumner, Thurman, and Wilson—29.

So the amendment was rejected.

Mr. THURMAN. I offer as a substitute for the two resolutions the following:

Resolved, That the Vice-President be, and he hereby is, directed to communicate to the district attorney of the District of Columbia the fact of the offenses committed by said White as hereinbefore recited, in order that he may be prosecuted under the statute in such case made and provided; and that said White be now discharged from the custody of the Sergeant-at-Arms.

On this amendment I ask for the yeas and nays.

The yeas and nays were ordered.

The question being taken by yeas and nays, resulted—yeas 10, nays 27; as follows:

Yeas—Messrs. Fenton, Gilbert, Hamilton of Texas, Harlan, Hill, Morton, Sprague, Tipton, Vickers, and Windom—10.

Nays—Messrs. Ames, Boreman, Caldwell, Carpenter, Casserly, Chandler, Clayton, Cole, Conkling, Cooper, Davis of Kentucky, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Howe, Logan, Osborn, Patterson, Pratt, Scott, Stevenson, Stewart, Stockton, Trumbull, West, and Wright—27.

Absent—Messrs. Anthony, Bayard, Blair, Brownlow, Buckingham, Cameron, Corbett, Cragin, Davis of West Virginia, Ferry of Connecticut, Hamilton of Maryland, Hamlin, Hitchcock, Johnston, Kellogg, Kelly, Lewis, Morrill of Maine, Morrill of Vermont, Nye, Pomeroy, Pool, Ramsey, Rice, Robertson, Saulsbury, Sawyer, Schurz, Sherman, Spencer, Sumner, Thurman, and Wilson—33.

So the amendment was rejected.

The VICE-PRESIDENT. The question recurs on agreeing to the preamble and resolutions. If a separate vote is not demanded they will be taken together.

Mr. VICKERS. I offer an amendment to strike out all after the word "whereas," in the preamble, and to insert:

Z. L. White having testified that he did not receive a copy of the treaty from any Senator, or officer or employé of the Senate, either directly or indirectly, thereby exculpating the Senate, its officers, and employés:

Resolved, That said Z. L. White be discharged from the custody of the Sergeant-at-Arms.

* * * * *

The VICE-PRESIDENT. The question is on the amendment of the Senator from Maryland [Mr. Vickers].

The amendment was rejected.

Mr. CASSERLY. I wish to offer a resolution either by way of substitute or amendment, whichever shall be in order. I send it to the desk.

The VICE-PRESIDENT. The Senator from California moves what will be read as a substitute or amendment. Which it is will be indicated by the Secretary reporting it.

The Chief Clerk read as follows:

Resolved, That the examination of each witness now in contempt shall be resumed by the committee, and whenever in the course of the examination of either witness it shall appear from his testimony to the satisfaction of the committee that the alleged copy of the treaty now before the Senate was obtained by or came to him from a person whose name is ascertained, but who is not a Senator, or officer, or employé of the Senate, then the testimony ascertaining such person shall be deemed to have been given in confidence to the committee and shall so remain; that the committee shall report to the Senate that it does so appear to its satisfaction; and thereupon the witness who has so testified shall be discharged.

Mr. CASSERLY. Mr. President, I am very unwilling at this late hour to occupy any time in stating my reasons for this resolution; and yet I must ask the indulgence of the Senate for a few words.

The object of the resolution is to observe the limit prescribed yesterday by the amendment of the Senator from Illinois [Mr. Trumbull] adopted by the Senate. That limit was that the inquiry of the committee as to the disclosure of the treaty should be confined to the case of a Senator, an officer, or an employé of the Senate. In other words, the Senate signified, in adopting that amendment, its purpose not to go outside of this limit of inquiry. The substance of my resolution is that whenever, in the course of the examination of the two witnesses now at the bar of the Senate, it shall appear from the testimony that the copy of the treaty was received from a person named by the witness who was neither a Senator, nor an officer or employé of the Senate, and therefore not within the scope of the inquiry prescribed yesterday by the Senate, the name of the person shall remain with the committee in confidence, and that upon the report of the committee to that effect the witness shall be discharged.

My objection to relieving the witness—and I believe the objection of most of the gentlemen on this side who voted as I did—was that I could not see, consistently with my ideas of a proper inquiry in this case, how the witnesses could discharge themselves by a general statement, such as that made by them. In other words, the witnesses merely offered to declare upon oath that they had not received the treaty directly or indirectly from a Senator, or an officer or an employé of the Senate. To accept such a statement would be to leave to the witness the right of deciding the case. It would leave to him the right of determining the judgment to be rendered. I beg leave to say, with great respect for those who differ from me, that such is not the function of testimony, either in the Senate, sitting as a court, or any other tribunal. The duty of the witness is to furnish the facts upon which some other party—either the court or the jury, as the case may be—shall render a verdict or a judgment. The Senator from Pennsylvania, [Mr. Scott] stated the precise point of the defect in the offer of the witnesses when he said that under the question of the committee as to who furnished the copy of the treaty the witness was bound to give the name of the person. In refusing to do it they denied the first object of testimony and assumed the right to defeat all inquiry by the Senate.

I think I appreciate fully the difficulty in which the witnesses find themselves when they set up an obligation which bars them from disclosing the name of the person from whom they received the treaty. It has happened to every man in the course of his life to have received a knowledge of facts in such a way that he felt himself precluded from declaring them in public, either in court or elsewhere, though he had no privilege behind which to shelter himself. In our practice as lawyers in the courts of law we know that such a case has very often happened.

A witness upon the stand is asked a question. He says he would rather not answer it. "Why not?" "Because," he says, "I received it under circumstances which have placed the seal of honorable silence on my lips, here or elsewhere." He pleads no privilege known to the law, neither as an attorney, nor as a physician, nor as a clergyman. What he says and all that he says is that honorably he can not disclose it. Of course that is a bar which the law does not recognize. It is the common case where an individual finds himself bound in a way which the law does not recognize—which can not impede the course of

justice. What is the solution? It is one which I have not seldom seen, which every lawyer has seen. By the consent of the counsel on both sides, the witness is allowed to state to the judge, in private, the ground of his difficulty, the nature of his honorable obligation, as he considers it. He does state it to the judge in private. I have rarely known a case where the judge did not recognize the equity of the witness, and decide, with the concurrence of the counsel, that the witness should be absolved from testifying.

Now, sir, the case here is a stronger one than the case of which I have spoken.

If the person from whom this treaty was improperly obtained was not a Senator, nor an officer of the Senate nor an employé of the Senate, we have declared that we have nothing to do with the matter. We have announced that we would not enter upon any such inquiry. And, sir, for myself, I wish to say that I consider that there are good reasons why I should not vote for any such inquiry. It is enough for me to say in a general way that the State Department, on grounds which are all satisfactory to itself, took a course in regard to this treaty somewhat unusual, the result of which was to give publicity, if not to the exact language of the treaty itself, at least to all its substantial provisions. I do not know that any one in the State Department went further than this. If anyone did, we are not here to inquire into it. I do not admit that the Senate has not the power to inquire into any disclosure of a paper or a proceeding which should be secret. Enough to say now that the Senate has resolved not to inquire into the course of any other department of the Government. Even were that otherwise, I mean to say that if I knew to-day where the proof was of any dereliction of the State Department I should deem it to be better, for the harmony of the several branches of the Government, for the credit of the Government and of the American people, that no such inquiry should be set on foot. It will be easy to regulate the matter in the future.

But, as I said, the inquiry being confined to what has been done by some member of the Senate, or person connected with the Senate, it seems to me clear that whenever in the course of this examination the witnesses are willing to give to the committee the name of some person from whom they received this document, which person is not a member of the Senate nor an officer of the Senate nor an employé of the Senate then the investigation ends and the witnesses are discharged.

Hence it is that my amendment presents a solution of this question which has occupied a most inconvenient and inordinate portion of the time of this session that ought to be devoted to a very different and, indeed, a higher object. As a compromise of the difficulties, I trust it will be accepted by the majority here.

The VICE-PRESIDENT. The question is on the amendment of the Senator from California, being a substitute for the preamble and resolutions. Is it offered as a substitute or as an additional resolution?

Mr. CASSERLY. As a substitute, I suppose.

The amendment was rejected.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

The call of the roll was concluded.

Mr. STOCKTON. I was in favor of the resolution offered by my friend and neighbor, the Senator from California [Mr. Casserly]. I was desirous that the examination should be continued, because the charge was made openly here from the committee that they expected to trace this

matter to a Senator, and after that charge was made I deemed it my duty to continue the investigation. But I did not think the witness should be imprisoned for not answering questions which were not pertinent. Therefore the substitute offered by the Senator from California, after having spoken to several gentlemen on both sides of the House, I thought would meet the case. As it now stands I can not vote in favor of the resolution of the Senator from Wisconsin. I vote "nay."

The result was then announced—yeas 24, nays 14; as follows:

Yeas—Messrs. Ames, Boreman, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Davis of Kentucky, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Howe, Logan, Morrill of Maine, Morrill of Vermont, Patterson, Pratt, Scott, Stewart, Trumbull, West, and Wright—24.

Nays—Messrs. Bayard, Casserly, Davis of West Virginia, Fenton, Hamilton of Texas, Harlan, Morton, Saulsbury, Sprague, Stevenson, Stockton, Tipton, Vickers, and Windom—14.

Absent—Messrs. Anthony, Blair, Brownlow, Buckingham, Cameron, Cooper, Corbett, Cragin, Ferry of Connecticut, Gilbert, Hamilton of Maryland, Hamlin, Hill, Hitchcock, Johnston, Kellogg, Kelly, Lewis, Nye, Osborn, Pomeroy, Pool, Ramsey, Rice, Robertson, Sawyer, Schurz, Sherman, Spencer, Sumner, Thurman, and Wilson—32.

The preamble and resolutions, as adopted, are as follows:

Whereas Z. L. White appearing at the bar of the Senate in the custody of the Sergeant-at-Arms, pursuant to the resolution of the Senate of the 16th of May instant, was required, by order of the Senate then made, to answer the following interrogatories:

"*First.* What excuse have you for not answering the several interrogatories propounded to you by the members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May instant?"

"*Second.* Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?"

And whereas said White was authorized by order of the Senate, on the 17th day of May instant, to answer said interrogatories this day; and whereas the said White has delivered his answer in writing to said interrogatories, but shows no valid excuse for not answering the questions put to him by said special committee, and has not answered that he is ready to appear before said committee and answer all proper questions touching the disclosure mentioned in said second interrogatory; and whereas the said witness was also required by order of the Senate then made, to answer certain questions which had been put to him by said committee, and which he had refused to answer, as shown by the report of the committee, and has refused at the bar of the Senate to answer a portion of said questions which had been put to him by said committee; and whereas the said Z. L. White has not purged himself of the contempt wherewith he stands charged: Therefore,

Be it resolved, That the said Z. L. White be committed to the custody of the Sergeant-at-Arms, to be kept by him in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and appear before said committee and answer such proper questions as may be propounded to him by said committee; and for the commitment and detention of the said Z. L. White this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having said Z. L. White in custody shall be informed by said White that he is ready and willing to answer, as aforesaid, it shall be the duty of such officer to bring him before said committee; and if he shall duly answer the questions reported to the Senate, and which he has refused to answer, though required by the Senate to answer the same, said committee shall cause him to be discharged from custody; and said committee shall be continued during the recess following the present session, and are hereby authorized to sit during said recess, with all the powers conferred by the original resolution of the Senate under which said committee was appointed: *Provided*, That if said committee shall fail to assemble within ten days after said witness shall notify the Sergeant-at-Arms of his willingness to answer the questions he has heretofore refused to answer, and such other proper questions as shall be propounded to him, then he shall be discharged. And it shall be the duty of the Sergeant-at-Arms forthwith, when informed of the readiness of said White to appear and answer as aforesaid, to notify every member of the committee thereof.

Mr. CARPENTER. I move now that Mr. Ramsdell's case be acted on.

The VICE-PRESIDENT. Mr. Ramsdell will present himself.

[Mr. Ramsdell was conducted from his chair to the area in front of the Secretary's desk, where he remained standing.]

The VICE-PRESIDENT. Mr. Ramsdell, are you now ready to answer the interrogatories propounded by me to you yesterday?

Mr. RAMSDELL. I am; and I send my answers to the Chair.

The VICE-PRESIDENT. Do you desire to read them yourself, or do you prefer to have the Secretary read them?

Mr. RAMSDELL. I prefer that they should be read by the Secretary.

The VICE-PRESIDENT. The Secretary will read them.

The Chief Clerk read as follows:

I decline to answer the question of the honorable committee as to "where and from whom was obtained the document purporting to be the treaty of Washington," for reasons that must be apparent to every honorable man. Having given my solemn promise to the person that I would not reveal his name, to break my word would forfeit my self-respect and make me infamous in the eyes of my professional associates. It has been the practice of our profession not to disclose the names of persons furnishing information; it has been an unquestioned right for nearly a century. In case of libelous publications, the one furnishing the information is not punished nor proceeded against. Until I am released from my promise, which I believe I had a moral right to give, I must still decline to answer the question for refusing to answer which I am now before the Senate for contempt.

I am willing to make oath before the committee or elsewhere that I did not obtain what purports to be a copy of the treaty of Washington from any Senator, or officer or employé of the Senate, directly or indirectly; and I have no reason to believe that the document came from a Senator. I also state that the document from which the copy was made for telegraphing was not a Senate document as the same was described to me by the honorable committee.

H. J. RAMSDELL

[This written statement or answer was handed to the Secretary.]

Mr. CARPENTER. I move the same resolution precisely that has been adopted in the other case, changing the name.

The VICE-PRESIDENT. The Chair will state to the Senator from Wisconsin that he has a duty himself to perform before that. It is to swear the witness and propound the questions again to him in accordance with the resolution adopted on the Senator's own motion.

The WITNESS. If the President will permit me, I will, to save time, return the same answers again.

The VICE-PRESIDENT (to the witness). By the resolution of the Senate I am required to administer the oath to you.

The VICE-PRESIDENT thereupon administered to the witness the oath that the answers made to the questions propounded by the direction of the Senate should be "the truth, the whole truth, and nothing but the truth;" and said: If you desire now to waive the formal repetition of these questions and to answer——

The WITNESS. I return the same answers that I returned to the honorable committee.

Mr. CONKLING. If I may make a suggestion to the Chair and to the witness, I think it had better appear, as I presume the fact is, that the witness heard these questions propounded to the other witness, and therefore says what he does now, having heard them.

The VICE-PRESIDENT. The Chair would prefer to follow exactly the order of the Senate made yesterday, although the witness himself has waived it, as the Chair supposes parties in courts of justice may waive their rights. The resolution of the Senate has ordered the Vice-President to put to the witness again the questions which were put to him by the committee and which he failed to answer before the committee. The Chair observes that they differ somewhat from the questions put to the other witness.

Mr. CONKLING. My suggestion is, if the Chair will pardon me, that these questions were read in the Senate to-day and yesterday, and that the witness heard them, and therefore knows what they are.

Mr. EDMUNDS. We shall save time by letting the Chair go ahead.

Mr. TRUMBULL. I think the better way is to follow the direction of the Senate and ask the questions over again. The questions to this witness are not the same as those that were propounded to the other witness.

The VICE-PRESIDENT. The Chair will proceed to perform the duty imposed upon him by the resolution of the Senate, which, in a case of this importance and gravity, it is proper that he should do. [To the witness.] The Chair will proceed to propound to you the questions which were put by the committee. The Chair observes in the testimony that the first declination was as to three questions bearing on exactly the same point, and the Chair will therefore read all those questions and answers together:

Question. Who had that printed copy from which this manuscript was copied?

Answer. I shall have to decline to answer that question.

Question. Do you mean that you refuse to answer?

Answer. I mean that, with due respect to the committee, I shall have to decline to answer it.

Question. Do you refuse to answer it?

Answer. I suppose that is substantially the same thing.

The WITNESS. I now decline to answer.

The VICE-PRESIDENT. The next question you declined to answer was, "In whose possession did you first see it?"

The WITNESS. I decline to answer that also.

The VICE-PRESIDENT. The next question which you declined to answer was, "Who was present in the office at that time?"

The WITNESS. I make the same answer now that I did before the committee.

The VICE-PRESIDENT. This examination seems to have been more colloquial than the other. The next matter as to which you declined to answer is involved in three questions and answers, which need to be taken together:

Question. How many persons were in that office, to your knowledge, that night between 10 and 1 o'clock?

Answer. I do not think it would be proper for me to answer that question.

Question. Do you mean that you refuse to answer it?

Answer. Yes, sir, I decline.

Question. You do not decline on the ground that you can not answer it, but you will not answer it; is that it?

Answer. I dislike to say that I will not, because it is not out of any disrespect to the committee; but I do not think I have a right to answer it.

The WITNESS. I will say now that it is impossible for me to answer as to the number of persons in the office that evening. There were, perhaps, in the neighborhood of a hundred.

The VICE-PRESIDENT. The next question you declined to answer was, "Do you know from whom that printed copy was obtained?"

The WITNESS. That I decline to answer.

The VICE-PRESIDENT. The next question which you declined to answer was, "Do you know what was paid for it?"

The WITNESS. I also decline to answer that.

The VICE-PRESIDENT. Without referring to the previous question, the following brief question was put to you, "In whose possession?"—of course referring to the copy.

The WITNESS. That I decline to answer.

The VICE-PRESIDENT. The next question you declined to answer was—

By Mr. TRUMBULL:

Question. What kind of print was it? Was it a folio print, or was it the ordinary Senate print, octavo form?

Answer. I decline to answer that.

The WITNESS. I am willing to answer that it was in folio form of print.

The VICE-PRESIDENT. Another question, put by the Senator from Illinois, was prefaced by a remark incorporated into the question, and the Chair must read the whole of it.

Question. We have the means of knowing when the Senate print was printed, and that would determine, perhaps, whether it was possible that the copy sent by telegraph was taken from that, and I asked you the question as to the form of the print with a view to determine that matter. I understand you decline to answer whether the print which you saw was in the form that Senate documents usually are printed, on octavo sheets, or whether it was printed on different sheets. Do you decline to answer that question?

Answer. Yes sir; I do.

The WITNESS. I will amend that by saying that it was in folio form, described to me by the committee as not a Senate document.

The VICE-PRESIDENT. There was also a question connected with the colloquial remarks which the Senator from Illinois and the chairman both propounded before it was answered:

Mr. TRUMBULL (to the witness). I will say to you what I said to a previous witness, that it may relieve you of trouble to answer all questions so far as the Senate is concerned. This is an investigation as to whether copies of the treaty may have been obtained from Senators or anybody else. If it turns out that the copy you obtained was not the Senate copy, other questions might arise; but so far as the Senate is concerned, I think you, gentlemen, will have to answer whatever proper questions are propounded to you. The inquiry which I have propounded is one in reference to the print. You have already stated that the copy you saw was in print. I have asked you whether it was the usual form of Senate printed documents.

The CHAIRMAN (to the witness). And that question you refuse to answer?

The WITNESS. At present I should decline to answer it.

The Chair understands the witness now to answer it.

The WITNESS. That question I have answered already.

The VICE-PRESIDENT. After being recalled, the chairman explained (which the Chair will not read) the penalty for not answering, and the chairman then said to you:

Having made this explanation, I now ask you, as I did before, from whom the printed copy of what purports to be the treaty of which you have spoken was obtained?

The WITNESS. That I shall decline to answer.

Question. Do you still refuse to answer?

Answer. Yes, sir; I refuse, if you so esteem it. "Decline" is the word I used, however.

The WITNESS. I respectfully decline to answer that.

The VICE-PRESIDENT. The Chair has now read all the questions which you decline to answer before the committee. You can now resume your seat.

[Mr. Ramsdell thereupon returned to the seat provided for him.]

Mr. CARPENTER. Now I move in this case the resolution which has been adopted in the case of Mr. White.

The VICE-PRESIDENT. With the amendments?

Mr. CARPENTER. The resolution just as it was finally adopted, with the mere change of name.

The VICE-PRESIDENT. Does any Senator demand the reading of the resolution? ["No!" "No!"] The question is on adopting the preamble and resolutions in the case of Mr. Ramsdell, precisely in the same language as in the case of Mr. White, merely changing the name.

Mr. FENTON. This is a very grave and important question, and I think we had better have a record on it as we had in the other case. I therefore ask for the yeas and nays on the adoption of this preamble and these resolutions.

The yeas and nays were ordered.

Mr. BUCKINGHAM. Before the vote is taken I will state that on this question also I am paired with the Senator from Massachusetts [Mr. Sumner]. He, if present, would vote against the resolution, and I should vote for it.

Mr. COOPER. On this question I am paired with the Senator from Missouri, Mr. Blair. He, if here, would vote "nay," and I should vote "yea."

Mr. STEVENSON. I am paired with my colleague, Mr. Davis. He, if present, would have voted "yea," and I would have voted "nay."

Mr. WILSON. I am paired with the Senator from Maine, Mr. Hamlin. He, if present, would have voted "yea," and I should have voted "nay."

The question being taken, resulted—yeas 23, nays 14; as follows:

Yeas—Messrs. Ames, Boreman, Caldwell, Carpenter, Chandler, Clayton, Cole, Conkling, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Howe, Logan, Morrill of Maine, Morrill of Vermont, Patterson, Pratt, Scott, Stewart, Trumbull, West, and Wright—23.

Nays—Messrs. Bayard, Casserly, Davis of West Virginia, Fenton, Hamilton of Texas, Harlan, Kelly, Morton, Saulsbury, Sprague, Stockton, Tipton, Vickers, and Windom—14.

Absent—Messrs. Anthony, Blair, Brownlow, Buckingham, Cameron, Cooper, Corbett, Cragin, Davis of Kentucky, Ferry of Connecticut, Gilbert, Hamilton of Maryland, Hamlin, Hill, Hitchcock, Johnston, Kellogg, Lewis, Nye, Osborn, Pomeroy, Pool, Ramsey, Rice, Robertson, Sawyer, Schurz, Sherman, Spencer, Stevenson, Sumner, Thurman, and Wilson—33.

The preamble and resolutions, as adopted, are as follows:

Whereas H. J. Ramsdell appearing at the bar of the Senate in the custody of the Sergeant-at-Arms, pursuant to the resolution of the Senate of the 16th of May instant, was required by an order of the Senate then made to answer the following interrogatories:

"*First.* What excuse have you for not answering the several interrogatories propounded to you by members of the special committee of the Senate, before which committee you were examined as a witness on the 15th day of May instant?"

"*Second.* Are you now ready to appear before said committee and answer all proper questions which may be put to you by said committee touching the disclosure, directly or indirectly, through any member of the Senate, or any officer or employé thereof, of what purports to be a copy of the treaty of Washington now pending before the Senate in executive session?"

And whereas said Ramsdell was authorized by order of the Senate, on the 17th day of May instant, to answer said interrogatories this day; and whereas the said Ramsdell has delivered his answer in writing to said interrogatories, but shows no valid excuse for not answering the questions put to him by said special committee, and has not answered that he is ready to appear before said committee and answer all proper questions touching the disclosure mentioned in said second interrogatory; and whereas the said witness was also required by order of the Senate then made to answer certain questions which had been put to him by said committee, and which he had refused to answer as shown by the report of the committee, and has refused at the bar of the Senate to answer a portion of said questions which had been put to him by said committee; and whereas the said H. J. Ramsdell has not purged himself of the contempt wherewith he stands charged: Therefore,

Be it resolved, That the said H. J. Ramsdell be committed to the custody of the Sergeant-at-Arms, to be kept by him in close custody until he shall signify his willingness to answer the questions propounded to him by the Senate, and appear before said committee and answer such proper questions as may be propounded to him by said committee; and for the commitment and detention of the said H. J. Ramsdell this resolution shall be a sufficient warrant.

Resolved, That whenever the officer having said H. J. Ramsdell in custody shall be informed by said Ramsdell that he is ready and willing to answer as aforesaid, it shall be the duty of such officer to bring him before said committee; and if he shall

duly answer the questions reported to the Senate and which he has refused to answer, though required by the Senate to answer the same, said committee shall cause him to be discharged from custody; and said committee shall be continued during the recess following the present session, and are hereby authorized to sit during said recess with all the powers conferred by the original resolution of the Senate under which said committee was appointed: *Provided*, That if said committee shall fail to assemble within ten days after said witness shall notify the Sergeant-at-Arms of his willingness to answer the questions he has heretofore refused to answer, and such other proper questions as shall be propounded to him, then he shall be discharged. And it shall be the duty of the Sergeant-at-Arms forthwith, when informed of the readiness of said Ramsdell to appear and answer as aforesaid, to notify every member of the committee thereof.

MAY 19, 1871.

[Congressional Globe, p. 888.]

PUBLICATION OF TREATY OF WASHINGTON.

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Mr. EDMUNDS. I wish to say on this important subject that what we have seen this morning illustrates the propriety, when we are undertaking to find out the truth, of having witnesses sworn and examined in the ordinary way and having them tell the truth, instead of concealing it. If the witnesses who are now in custody will tell the truth, as the law requires them to do, then we shall know where the treaty came from, and Senators will either be exonerated or not exonerated as the truth may turn out. I certainly trust and hope that we all shall be. I hope to be, myself, and I hope all my fellows will. But we shall never know the truth until somebody is obliged to tell the truth in order that we may find out. I think nothing illustrates more entirely the propriety of finding out the truth in the usual way and manner from people who may be obliged to tell it, than the very difficulty we are having this morning, suspicion pointing to this man or that man, unjust, no doubt, in all cases; but suspicion pointing to everybody, and the Senate is absolutely blocked in finding out whether that suspicion is just or unjust by the only natural and proper source in which it can be found. That is all I wish to say.

Mr. MORTON. One word. Suspicion has pointed to Senators, perhaps, from statements that have been made on this floor. I, for one, was not to be driven from doing what I thought was right because intimations had been made that this publication would be traced to a Senator.

Mr. EDMUNDS. I do not intend to dispute that at all. I hope my friend will not think that I wish to drive him or any other Senator from what he thinks to be right. That is a matter of judgment. I only wish to add, in connection with what he has said on the floor, that I think it right to say that I have heard these suspicions in a good many quarters outside of this Chamber, and for a good many days, referring to Senators, referring to more than one Senator; and of course, as I believe these suspicions must be entirely unfounded, and, if we could get at the truth, would be demonstrated to be, I should be very far from naming any person to whom suspicion referred, even if it might be myself; very far.

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MAY 22, 1871.

[Congressional Globe, p. 890.]

RELEASE OF RECUSANT WITNESSES.

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Mr. WILSON. I merely wish to offer a resolution to have it laid on the table now, to be called up at some other time. I send the resolution to the Chair.

The resolution was read, as follows:

Resolved, That the Sergeant-at-Arms of the Senate be, and he is hereby, directed to discharge Z. L. White and H. J. Ramsdell, now held in custody by him by an order of the Senate, immediately upon the final adjournment of the special session of the Senate.

Mr. EDMUNDS. Let that go over until to-morrow.

Mr. SUMNER. Now I ask to have the order read which I have sent to the Chair.

The Chief Clerk read as follows:

Ordered, That Z. L. White and H. J. Ramsdell, witnesses now in close custody of the Sergeant-at-Arms, be discharged from such custody forthwith.

Mr. EDMUNDS. Let that lie over.

MAY 25, 1871.

[Congressional Globe, p. 892.]

RELEASE OF RECUSANT WITNESSES.

Mr. WILSON. I now move to take up the resolution discharging, on the adjournment of the Senate, Mr. White and Mr. Ramsdell.

The PRESIDENT *pro tempore*. The resolution will be read for information.

The resolution submitted by Mr. Wilson on the 22d instant was read, as follows:

Resolved, That the Sergeant-at-Arms of the Senate be, and he is hereby, directed to discharge Z. L. White and H. J. Ramsdell, now held in custody by him by an order of the Senate, immediately upon the final adjournment of the special session of the Senate.

The PRESIDENT *pro tempore*. The question is "Will the Senate proceed to the consideration of the resolution which has just been read?"

The motion was agreed to.

The PRESIDENT *pro tempore*. The resolution is before the Senate.

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The PRESIDENT *pro tempore*. The resolution of the Senator from Massachusetts [Mr. Wilson] for the discharge of Z. L. White and H. J. Ramsdell is before the Senate, upon which the Senator from Michigan [Mr. Chandler] is entitled to the floor.

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The PRESIDENT *pro tempore*. The question is on the resolution of the Senator from Massachusetts [Mr. Wilson], upon which the Senator from Michigan is entitled to the floor.

Mr. CONKLING. Will my friend yield to me for a moment, as I wish to make a remark or two not connected with the merits of the subjects which are to be discussed?

Mr. CHANDLER. Certainly, I will give way.

Mr. CONKLING. Mr. President, the matter before the Senate, as seen by the public, has been beclouded and incumbered with allegations so unfounded as to merit correction. Some of these inventions relate to me, and were they wholly personal in their effect no notice of them here would be appropriate. They relate, however, to acts done, if done at all, in my representative character; and nothing is plainer than the duty of a representative to hold himself responsible at all times to his constituents, and to answer to them for all public or official acts. I therefore improve this opportunity to say something of my connection with the pending inquiry, meaning and wishing to take the whole responsibility of every part of my participation in it. The investigation was not suggested or originated by me, nor by the Senator from Wisconsin. It originated in executive session, and therefore, under the rules of the Senate, I am at liberty to say only that the betrayal of the treaty and the need of an investigation were not brought to the notice of the Senate by the Senator from Wisconsin nor by me. Indeed, I heard for the first time in the Senate that an alleged copy of the treaty had been made public. The statement was that a newspaper in Cincinnati and a newspaper in New York had published it. This was the day after the publication, and was my first information on the subject. I had seen neither newspaper, and did not see either until the committee had been raised to investigate, nor had I ever heard a suspicion of the hand or the means by which the document found its way to the public.

The Vice-President did me the honor to place me on the committee. This was done without consultation with me, and without knowledge or wish on my part. I was not present at the first meeting of the committee until after the witnesses, White and Ramsdell, had refused to testify, and it was when they were recalled to hear the judgment of the committee as to their obligation to answer that I first came to know who they were. Until then they were entire strangers to me. I had never seen either of them to my remembrance, as acquaintances, or as persons known to me as correspondents of any newspaper, or even by name. They refused to state the very fact the committee was ordered by the Senate to ascertain, although they knew the fact, and I concurred with the other members of the committee that we were bound to report them to the Senate as in contempt, and to be dealt with accordingly. This was the unanimous report of the committee, the Senator from Kentucky alone being absent at the time, and he expressing his concurrence afterward on the floor of the Senate. The report was right; any other report would have been wrong.

The refusal of the witnesses to testify left but one course to the committee, and the report of the committee left, as it seemed to me, but the alternatives to the Senate, either to abandon the investigation just ordered, or to maintain the law which declares that witnesses shall answer. The question was wholly judicial, we having no more to do with personal feeling in acting upon it than the judge on the bench, or the juror in the box, has to do with personal feeling for or against the parties to a case he is called on to decide. In the Senate, however, a discussion arose, and took such direction as to imply that the question might be made to depend in some way upon the relations of the witnesses, or of the newspaper employing them, to the members of the Senate. Such a suggestion seemed to me quite foreign and fallacious; still, it determined me to abstain from the participation in the proceeding which naturally devolved on me as a member of the committee. The chairman of the committee had a right to expect me to

share with him the labor of the debate, and ordinarily I would, of course, have rendered him any aid in my power. In view, however, of the attitude of one of the newspapers in question toward me, so well known to Senators and to its readers generally, it seemed to me better that I should abstain from the discussion, lest my words might appear to be influenced by feeling, and not wholly prompted by an impartial sense of duty. My silence, Mr. President, has been for the reason stated, and not from any wish to shun the work or the responsibility the Senate laid upon me.

One other remark. During my absence from the Chamber my colleague caused to be read from a Washington paper a paragraph stating that suspicion had fallen upon him, and that the suspicion emanated wholly or in part from me, or that I had given it currency. Had my colleague shown me the paragraph, or called attention to it in my hearing, I should have told him, as I need hardly tell the Senate now, that the statement was destitute of truth, a fabrication as sheer as the other newspaper statements we have lately seen of somewhat similar character, and which I think can hardly have imposed upon the credulity of anyone.

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Mr. CARPENTER. Mr. President, I am instructed to make a report, and as it is short I ask to have it read.

The PRESIDENT *pro tempore*. The Senator from Wisconsin makes a report from the committee of investigation and asks to have it read. It will be read.

The Chief Clerk read the report, as follows:

The special committee of the Senate appointed under Senate resolution, adopted May 12, 1871, to investigate certain matters mentioned in said resolution, respectfully report, in part, that they have examined John M. Morris, John H. Flagg, George W. Adams, W. P. Tisdell, Charles S. Taft, M. R. Shankland, W. J. McDonald, N. F. Ethell, Henry T. Brian, J. C. Bancroft Davis, Richard J. Hinton, and Senators Edmunds, Morton, Howe, and Conkling, and Whitelaw Reid, and their testimony is hereto attached and made part of this report.

A copy of the testimony of Z. L. White and H. J. Ramsdell, so far as said witnesses would testify before said committee, is also attached to this report and made part thereof.

That on the 22d day of May instant your committee met at the Capitol, at 7 p. m. of that day, for the purpose of proceeding with the said investigation, and Charles A. Tinker, who had been duly summoned to attend as a witness before said committee, then and there appeared, and submitted to be examined as such witness, and, having been first duly sworn by the chairman of said committee, certain questions, proper and pertinent to the investigation ordered by the Senate to be made by said committee were propounded by said committee to said witness, which he then and there refused to answer, as shown by the notes of his examination hereto attached and made part of this report.

That on the 23d day of May instant, at 7 o'clock p. m., the committee again met at the same place, for the purpose aforesaid, and Joseph A. Kirby, who had been duly summoned as a witness, appeared before said committee and then and there submitted to be examined as a witness before said committee, and, having been first duly sworn by said chairman, certain questions were propounded to him, which were proper and pertinent to the investigation ordered by said resolution of the Senate, which he then and there refused to answer, as shown by the notes of his examination hereto attached and made part of this report.

Your committee, therefore, report that the said Tinker and the said Kirby are in contempt of the Senate for their refusal to answer said questions.

MATT. H. CARPENTER, *Chairman*.

GARRETT DAVIS,

ROSCOE CONKLING,

LYMAN TRUMBULL.

Mr. EDMUNDS. I see that the evidence is made part of the report. I should like to hear it read, certainly that of the Senators and those

employés of the Senate who are mentioned; I think I recognize two names, that of Mr. Taft and of some other gentleman whose name I do not remember at this moment—some clerk of a committee whose name I saw mentioned in the papers as having some knowledge about this matter. I should like the Secretary to read the testimony of all the Senators, and of all the employés of the Senate who are mentioned. [The testimony was then read.]

* * * * *

Mr. TRUMBULL. I was going to make a suggestion to the Senate to see if we could not come to some disposition of this matter, without protracting it, at a time when the Senate is impatient to adjourn; and in view of that impatience and of the probability of an early adjournment, to see if something could not be done that would be satisfactory to the Senate, would vindicate its authority and the law, and at the same time dispose of this matter.

I will preface a motion which I am about to make, if it shall seem to meet the views of a majority of the Senate, with a view of bringing this matter to an issue, by stating that unquestionably these witnesses are in contempt by refusing to answer proper questions which have been propounded to them. At least that is my opinion, and I think there can not be two opinions on that subject on the part of any person who examines the facts. The Senate has already decided that point in reference to witnesses who appeared before the committee.

Those two witnesses are in the custody of the Sergeant-at-Arms. Two other witnesses have since appeared before the committee and refused to answer what the committee deemed to be proper questions to be propounded to them. They are, therefore, in contempt also. But, Mr. President, the business for which the Senate was convened in extraordinary session has been completed and the Senate is about ready to adjourn. If those two witnesses who are now in contempt are to be dealt with by the Senate they must be summoned to appear before the Senate, and they must have an opportunity to purge themselves of the contempt before the Senate, and to answer these questions, before any definite action can be taken by the Senate in reference to them; at least that is the usual course of proceeding.

Now, in view of that state of facts, and as the Senate will be indisposed to remain here for the purpose of bringing these witnesses before it, and in view of the law which makes it a misdemeanor for witnesses to refuse to answer questions propounded to them by a committee of Congress, I venture to suggest what I regard as the better course. It requires no action of the Senate in regard to these witnesses who are now in contempt for refusing to answer questions propounded to them by the committee. That is the offense by the statute. All that is necessary to be done is that the committee should report to the House, of which they are a committee, that witnesses have refused to answer proper questions; and it then becomes the duty of the Presiding Officer to certify that fact to the district attorney of the District of Columbia, and the duty of the district attorney to bring it to the notice of the grand jury, who will take proper action in the case. Now, in regard to those witnesses that have refused to answer, it is not necessary to detain the Senate here several days to bring them into the Senate. The fact was reported by the Senator from Wisconsin a few minutes ago to the Senate, and under the circumstances I think if we cause these witnesses, as the law causes them, to be turned over to the district attorney here to be dealt with, it will satisfy all that we are required at this moment to do, and enable the Senate to adjourn and go home.

But there are two other witnesses in custody. What is to be done with them, it may be asked? We can not keep two in custody and turn them over, as we have already done, to be dealt with according to law, and allow two other persons equally guilty to run at large. Therefore, my suggestion is this: that the better course would be to discharge from custody those that we have in custody—the authority of the Senate has been vindicated in reference to them—and let them answer to the law in the same manner as the last two witnesses. Let all four of them be dealt with according to law, and the Senate can then adjourn.

And now, Mr. President, as it requires no action on the part of the Senate, and with a view of seeing if we can not dispose of this thing at once, the report having been made to the Senate and received, the law declaring what the duty of the Presiding Officer is, to certify the fact to the district attorney, I move to lay this whole subject on the table; and if that motion prevails, I shall follow it with a motion to discharge from custody the two persons that are now in custody here, to be dealt with as I have stated.

Mr. SHERMAN. That is the resolution now pending.

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The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Illinois, to lay the report on the table.

The motion was agreed to; there being on a division—ayes 34, noes 11.

The PRESIDENT *pro tempore*. The report is ordered to lie on the table, and be printed.

Mr. TRUMBULL. Now, I hope we shall vote on the resolution.

Mr. WILSON. Now we have the resolution up.

Mr. TRUMBULL. If there is a resolution pending, as I understand there is, I ask that it be acted on.

The PRESIDENT *pro tempore*. The resolution was laid aside informally; and its consideration will now be resumed.

Mr. TRUMBULL. If that covers the point, I hope it will be adopted.

The Chief Clerk read the resolution of Mr. Wilson as follows:

Resolved, That the Sergeant-at-Arms of the Senate be, and he is hereby, directed to discharge Z. L. White and H. J. Ramsdell, now held in custody by him by an order of the Senate, immediately upon the final adjournment of the present special session of the Senate.

Mr. SHERMAN. I offer this as a substitute:

Resolved, That it appearing that the committee have been unable to ascertain by whom the treaty of Washington was made public, by reason of the refusal of witnesses to testify, and no proof appearing that any Senator or officer of the Senate disclosed said treaty, it is ordered that the committee be discharged from the further consideration of the subject, and the Senate being about to adjourn the witnesses now in custody be discharged.

Mr. TRUMBULL. I do not know that I have have any objection to that long resolution; it would accomplish the only object which I have, which is to dispose of this matter; but I would prefer a mere resolution to discharge from custody the persons who are now held in custody. I wish to say one other word, and that is, that I have already stated that these witnesses are in contempt, and by that I mean that they have refused to answer proper interrogatories. That is the question that is to be dealt with in their cases. They ought to have answered; it was their duty to have done so, in obedience to the law and in the proper discharge, as it seems to me, of their duty, for I do not think that the press of the country is to be elevated in its character by winking at the obtaining of news by any improper means; and if no improper means were resorted to to obtain news, when a proper investigation

takes place it seems to me there ought to be no objection on the part of correspondents of papers or the gatherers-up of news (in view of the fact that the investigation is in support of law and of proper authority) to freely and fully disclose everything that is necessary to enable the law to take its course. In the condition the matter now is, the witnesses having assumed the position they have, the authority of the Senate having been vindicated, and we being about to adjourn, and as I have already stated, it being almost impracticable for the Senate to remain with a view of dealing with the other witnesses, I think the better course is to let them take the consequences of the position they have assumed before the judicial tribunals of the country.

Mr. SHERMAN. As I am afraid the proposition I have offered will give rise to debate at this period, when debate can be of no possible use, I withdraw the amendment and will let the original resolution stand.

Mr. WILSON. Now I hope we shall have the yeas and nays on the resolution and settle it. ["Question!" "Question!"] No; I will not ask for the yeas and nays.

Mr. EDMUNDS. Let us have the yeas and nays by all means.

Mr. CORBETT. I simply desire to say that I prefer the resolution of the Senator from Massachusetts, for the reason that it covers the ground, and that some doubt might arise as to the resolution of the Senator from Ohio.

Mr. SHERMAN. That is withdrawn.

Mr. CORBETT. I understand that. There is a question as to whether this newspaper did publish the treaty. I understand that the Tribune published what purported to be the treaty without the fortieth article, so that it was not the treaty, no more than the abstract of the treaty, published previously, was the treaty. Neither was it signed. The publication in the Tribune was not signed, and it was without the fortieth article, and therefore it was not the treaty, and they are no more guilty of publishing the treaty than they were in publishing the abstract of the treaty previously. Under the resolution that was adopted by the Senate the committee was instructed in these words:

Resolved, That a select committee of five Senators be appointed by the Chair, who shall investigate how, and by whom, the treaty known as the treaty of Washington and other recent proceedings of the Senate in executive session were made public, and that said committee have power to send for persons and papers.

The only "treaty" is the document that was printed in confidence for the Senate, and it has been decided that this publication in the Tribune was not the treaty, because it was not taken from a paper published in confidence for the use of the Senate. Therefore, I do not see but that the committee have discharged their duty. They have ascertained that this was not a true copy, and, as I understand by the testimony of the honorable Senator from Vermont, [Mr. Edmunds,] the copy that he received was different from the copies which we have upon our tables, and which were delivered to us in confidence. Therefore this whole question, it seems to me, falls to the ground, and we find that the Tribune has not published the treaty. For that reason I hope these prisoners will be discharged.

The PRESIDENT *pro tempore*. The question is on the resolution of the Senator from Massachusetts, Mr. Wilson, upon which the yeas and nays have been requested.

The yeas and nays were ordered.

Mr. TRUMBULL. Before the vote is taken I desire to call the atten-

tion of the Senate distinctly to what the law is. There seems to be some misunderstanding among Senators.

Mr. WILSON. You can do that afterward.

Mr. TRUMBULL. I think it had better be distinctly understood before we vote that it is the duty of the presiding officer to certify the facts. This is the act of January 24, 1857, 11 Statutes-at-Large, p. 155.

SEC. 1. That any person summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter before either House, or any committee of either House of Congress, who shall willfully make default, or who, appearing, shall refuse to answer any question pertinent to the matter of inquiry in consideration before the House or committee by which he shall be examined, shall, in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor, in any court of the United States having jurisdiction thereof, and on conviction, shall pay a fine not exceeding \$1,000 and not less than \$100, and suffer imprisonment in the common jail not less than one month nor more than twelve months.

Section 3 declares—

That when a witness shall fail to testify, as provided in the previous sections of this act, and the facts shall be reported to the House, it shall be the duty of the Speaker of the House or the President of the Senate to certify the fact under the seal of the House or Senate to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

Now it is reported to the Senate, and when it is so reported to the Senate it becomes the duty of the presiding officer to certify that fact; so that no other action is necessary than to bring the matter to the notice of the Senate, and I understand that the presiding officer has already notified the district attorney—I have heard that, though I have not heard it officially—in regard to the two witnesses who are now in custody.

Mr. BOREMAN. Mr. President, I should like to ask the Senator from Illinois his opinion as to the effect of a resolution discharging these witnesses on the proceeding in court. If we now pass a resolution to discharge them, will not that be a discharge of the offense?

Mr. TRUMBULL. I think not. It would have no effect upon it, in my judgment.

Mr. DAVIS, of Kentucky. By way of making that matter certain, I move, as an amendment, a proviso that this resolution shall in no way interfere with the duty of the Vice-President as presiding officer of the Senate in relation to the subject.

Mr. TRUMBULL. There is no objection to that, but it is not necessary, I think.

Mr. DAVIS, of Kentucky. There will be no difficulty then.

The PRESIDING OFFICER. The Secretary will reduce the amendment to writing.

Mr. EDMUNDS. Mr. President, the effect of this resolution with the amendment of the Senator from Kentucky will be to instruct any grand jury or any district attorney of the District of Columbia that the Senate is of opinion that it has been engaged in an unwise effort to extract statements from gentlemen who ought not to be obliged to make them, and that even if they were technically guilty of a violation of the statute, it was one of those mere technical and formal breaches of law in the interest of honesty and honor which ought not to be prosecuted at all. That will be the effect of this resolution, and I wish to wash my hands of that part of it in advance; other gentlemen can do as they like.

The next effect will be that the public will be entirely satisfied, as I

confess I shall be, as the result of the judgment of the Senate, that this treaty came to these enterprising gentlemen, with whom I have no personal quarrel at all, by the dishonor of some Senator; possibly myself, because I had the means, as my testimony has been read, for if I could have found out the emendations that were made to the print which I had I could have corrected that print and have sold it out. Now the public will be satisfied (and I do not blame them for it, for it will be a perfectly logical deduction and a perfectly fair one) that we have been undertaking to whitewash ourselves.

That will be the result. And they will find out another thing which I deplore much more than any of these, because the mere fact of the publication of this treaty is of no consequence at all; that is an entirely false issue. Here men obtained information that ought not to be obtained, and they are called as witnesses and asked to disclose it, being outside of the professions that claim the privilege of secrecy; and everywhere, as you find it in this additional report, if they do not think it a wise thing to tell the truth they decline. And it will be the opinion of mankind that the Senate thinks that, so far as it relates to our operations, no man is obliged at any time to tell anything that he may be called upon to tell in any of our investigations, whatever the statute may be, and if he fails to tell, there will be no consequences resulting to him or to the public of the least degree of inconvenience. That will be the result; and I think, sir, that is a great calamity in the interest of truth.

Senators wish to abolish this rule of secrecy altogether, and there are many considerations which would lead to that conclusion. There are many on the other hand—I do not intend to weary the Senate by stating them—a great many on the other hand. But if this rule is not to be abolished, then you have the extraordinary proposition that it is perfectly honorable and right for everybody to tell what he can obtain secretly from somebody that does know it, and it is perfectly dishonorable for anybody else to tell anything about it—a proposition which no man will maintain, a proposition that is disgraceful to us in having rules of this character, as we believe for the public interest, and at the same time declining (because that is the result of this performance in the sense of our duty) to compel gentlemen to state the truth because they think that they are bound not to state it. Very well; let us honor their conscientious convictions, but let them honor ours as well.

Ought they not to be willing to put us upon an equality with themselves, and to say that while as a matter of honor they feel obliged to take the consequences of refusing to testify, they respect the same honorable obligations to the law that governs the other side of this controversy, and which therefore compels us, in vindication of our constitutional rights and in vindication of our personal honor, to carry the investigation to a point which shall determine the real truth, which alone can vindicate anybody either by exculpation or by punishment? There is the difficulty; to stop this now is to tell the world, and tell it truly, that we do not really wish to know whether any of ourselves have been guilty of dishonor or not. Now, if I am the guilty party—possibly I am; the public from this testimony can not tell to a certainty until you carry it through—I wish to suffer the punishment of it. If some other person is guilty of the dishonor and I am not, I for one do not wish to bear the obloquy which attaches to him, for I have faults enough of my own without this one. That is the way it looks to me. Therefore, Mr. President, though I suppose this resolution is to go through, I wish to say that while I do not at this moment (because no man can criticise another man's sense of honor) criticise the sense of honor which seems

to oblige these gentlemen to say that they will not tell what they know, I think that they and everybody else ought to have the same respect for our honor and let us pursue the plain law in vindication of this inquiry, which is plainly incumbent upon us, as it seems to me.

Now, then, if the judgment of the Senate shall be that these rules are utterly broken down, and they are, the result will be that they become the shield for misrepresentation, or else every Senator must feel at liberty, in order to vindicate himself, to reveal what he knows of the private consultations of this body so far as in his honest judgment it is necessary for the cause of truth or self-respect. There is no choice. You must take one alternative or the other. If misrepresentation, without punishment, without pursuit, is to go out from such of the consultations of this body as it is thought wise to have private, then I say that when the sense of the Senate has determined that that species of betrayal and of misrepresentation shall not be sought out and punished it is the right of every man of honor in this body to defend himself and to defend his constituents by placing himself right before the public. Therefore, as in the case of my honorable friend from Massachusetts [Mr. SUMNER] the other day, who stated, and rightly, that any observations he may have been supposed to make in private consultations touching matters of public concern here were grossly misrepresented, he ought to have the right (if you adopt this principle of inquiring into nothing and carrying nothing to its results), and I should defend him in exercising the right, not only of stating, as he did the other day, that he did not say so and so, but that he did also say so and so, as the truth might be. If that is the general understanding, very well; let us all understand it; but, of course, the effect of that is to have nothing which can be regarded as really confidential, because every gentleman must judge for himself of what it is necessary that he should reveal for the sake of truth and honest and fair dealing between gentlemen and men.

Now, I wish to say, Mr. President—and it is scarcely necessary that I should say it—that I have not the slightest quarrel with these gentlemen. They exercised their own judgment as to what it was fitting for them to do. I shall exercise mine. I think the law requires me and that duty requires me to insist that they shall answer. They think it does not. If a majority of the Senate think they are right and I am wrong, very good; I submit. That is all I have to say.

Mr. WILSON. Mr. President, the Senator from Vermont [Mr. EDMUNDS] is an acute, adroit, and skillful lawyer, and we who are not lawyers think it sometimes the business of such lawyers “to make the worse appear the better reason.” Now, sir, I think the Senator from Vermont has not put this case fairly before the Senate or the country. I do not think the Senator believes, I am confident the country will not believe, that this treaty has gone to the public through the personal dishonor of any member of this body. There is not the shade of the shadow of evidence that implicates any member of this body in that matter, and the country will see nothing.

We have had an investigation. The honorable Senator from New York [Mr. CONKLING] prepared the resolution; it was introduced by the honorable Senator from Wisconsin [Mr. CARPENTER].

Mr. CARPENTER. I call the gentleman to order. He has no right to disclose what took place in executive session.

Mr. WILSON. I beg pardon for that.

Mr. NYE. I do not see that there is any objection to it under his theory.

Mr. CARPENTER. I do not, either.

Mr. WILSON. What I wished to say was that all of us assented to it. At any rate we have had this investigation in public, though it was begun in private. We have taken testimony. What we have convicted nobody. I do not know what would have come; I do not believe anything would have come that affected a member of the body. I do not think the country will so consider it. Therefore I object to the presentation the Senator from Vermont has put upon the case. The case will go before the judicial tribunals, and I hope a fair and honest effort will be made to execute the law and that it will be carried out; but I do not see that any of us are implicated in this matter. I hope the resolution pending will be adopted.

Mr. BUCKINGHAM. I ask the indulgence of the Senate, weary as I know it is, for a few moments.

I have no doubt about the propriety of the rule of the Senate. I have no doubt that it is as binding as a law; that it is a rule adopted with reference to the public interests, and that it ought to be observed. I have no doubt about the propriety of the law that punishes a witness if he refuses to answer inquiries made by committees authorized by this body. I have no doubt that the witnesses who refused to answer are in contempt. They occupy the position of men who refuse to answer, when an inquiry is put which will lead to the very information that the Senate seeks, on the ground of personal honor.

I believe most fully in the liberty of the press, and I will admit the right of men connected with the press to exert their energies, to be as enterprising as they please; and I do not know but that I am ready to admit that they have a right to secure, if they can, information which is contraband by the rules of the Senate and publish it to the world. I will not say that it is the most honorable thing which a man can do; but for the sake of the argument I will admit the right, and I will also concede that they have a right still further to obtain the information by purchase if they can, and then publish it to the world as news; and this is the position which they take. But, while they take it, and I allow it, I am not quite ready to justify it.

But when a question is propounded which will lead to the very information that we are seeking, they shield themselves from answering it on the ground that they are bound in honor not to reveal it. Now, I believe in honor. I believe that a man should keep his promises. I believe he should be careful how he makes them, but when he makes a pledge, a promise, when he is under obligations of honor to keep a thing secret, if the keeping of that secret only brings sorrow and grief to him he should bear the consequences, let them come as heavily as they may. But here is a question between the consequences which come to an individual by maintaining what he calls his honor and the benefits which are to result to the public by adhering to a rule which has the binding force of law and is adopted for the interests of the public. Now, can a man be screened there? I think not. I think public justice should outweigh the feelings and the privations of the individual, and he is under obligations to the public to yield his opinion to the demands of law. I do not know how public justice could be administered otherwise. Take the case which occurred here a few years ago on the occasion of the murder of President Lincoln. He was shamefully murdered, as we all know. It was rumored that a man in the neighborhood performed certain professional services to a man, and it was thought if we could find him we might get at the murderer. He was brought before a court. Suppose, when the question was asked, "Did

you perform certain professional services, and for whom?" he should decline to answer on the ground that his professional honor was implicated, which should yield, his personal honor or the demands of justice? I say the one, the interest of the public, is far greater than the other; and he is under obligation as a man to yield, to violate what he calls his professional honor; but it is only yielding to the claims of public duty. And there is no such thing as the administration of justice, in my judgment, in this or any other Government, without this principle.

But now there is another question that presents itself to my mind; and it has been suggested in the debate. It is, what can the Senate do? In one sense it is like a court; and its powers are limited by practice, by custom, if not by law. It has been said that no legislative body ever held a witness for contempt beyond the time of its adjournment. This being so, it is a question whether this practice has not all the power and efficiency of law, and whether this Senate has a legal right to hold these persons in imprisonment beyond the time of its adjournment. Mr. President, it is a great misfortune to justice if it has not. But then the court must be controlled by the law. If this is the law, if it has been universal, then this may be an instance in which the law is unable to press the claims of justice so that justice shall succeed and triumph. We come short by law, we come short by practice of securing the great end which we are aiming at, because we have no legal authority. I think there is a good deal of force in that; and although I condemn most fully and clearly the position of the witnesses, I think I must, for that reason, be constrained to vote for their release. I think I must do so contrary to all the votes which I have heretofore given; but it appears to me that it is in accordance with the limits which have heretofore been imposed on the powers of legislative bodies.

Mr. CONKLING. Mr. President, within the last fifteen minutes I was absent from the Chamber not to exceed five minutes, I think not so long, and during that absence, as I am informed, the Senator from Massachusetts nearest me [Mr. Wilson] made a statement which I ask him now to repeat in my presence.

Mr. WILSON. My statement was this, precisely: that the resolution asking for the appointment of a committee was prepared by the Senator from New York and presented by the Senator from Wisconsin; and I intended to say that we gave it a unanimous vote and were all responsible for it, one as well as another. That is what I intended to say; but I was reminded that I was trenching upon executive matters, which had not come into my mind for the reason that this proceeding has been in public so much that it seemed to me the whole matter was before us as a matter to be talked about, and I did not think I was violating the rule.

Mr. CONKLING. Mr. President, the mention of executive session comes too late now, the Senator has passed that Rubicon and forced me to overleap it with him; he has overstepped too far to retrace his steps. Will he gratify my curiosity by informing me, also, for what purpose and with what view he made the statement in reference to my drawing the resolution, accompanied, I am told, with some intimation that the Senate followed my lead?

Mr. WILSON. My object was to show that we began this matter here; that we were all unanimously for it; that we were all committed to it as much as the Senator from New York or the Senator from Wisconsin, and equally responsible; that we had proceeded with the investigation to a certain point and had not proven any Senators guilty in the matter, and that now we ought to drop the whole matter. That was my inten-

tion. I had no idea of injuring the Senator from New York in any way, shape, or manner, and did not know it would.

Mr. CONKLING. Mr. President, whenever the honorable Senator from Massachusetts injures me by ascribing to me anything that is true, although he violates the rules of the Senate in so doing, I give him a bond in advance not to complain. I have something to say, however, about this statement of the Senator, because, attributing to him common intelligence, the statement was intended to convey to the Senate and to the gallery the impression that my statement made to the Senate an hour ago was incorrect; I have something to say about it for the further reason that it seems designed to give color to the false assertions sent abroad in the country that I brought forward the proposition to investigate the betrayal of the treaty, and that I began and urged the inquiry with special and personal aims.

The statement made by the Senator from Massachusetts has a strange similitude and likeness to some of these current libels; it sounds as if uttered here to bolster up some previous assertion; and yet I must suppose that here for the first time he has violated the rule and confidence of the Senate in attempting to detail what took place. I would not willingly believe this a second offence with regard to this transaction; I will not suppose him capable of making the statement to create an impression he knows to be false. Mr. President I shall state what did take place in executive session. I intend to do so notwithstanding the rule the Senator has dissolved. I am driven to this by the statement the Senator has made and the Senate has permitted. When a Senator comes into the presence of the Senate and tramples the rule under foot, compelling another Senator to rest under an imputation upon his veracity, or else to speak, I submit he must speak, and can not be trammelled by a rule which has been broken into fragments before his eyes.

Mr. President, the betrayal of the treaty, and our duty to investigate it, was brought to the attention of the Senate by the honorable Senator from Ohio, now in his seat nearest to me [Mr. Sherman]. From his lips, speaking to the Senate, I heard for the first time that the treaty had been betrayed to the public. His statement was that it had been betrayed through the columns of a newspaper in New York and a newspaper in Ohio, and we heard him demand to know of the chairman of the Committee on Foreign Relations whether he intended to pass over such a breach of privilege. I heard the Senator from Massachusetts farthest from me [Mr. Sumner] follow him, saying—I use his own expression, and I take every Senator who was present to witness—that we should depart from the ancient ways of the Senate (that was his phrase) if we passed over in silence a betrayal like this.

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Mr. CONKLING. Mr. President, I proceed to say that it was demanded of the chairman of the Committee on Foreign Relations that that committee should investigate and ferret out this breach of privilege. It was objected by the chairman, very naturally, that the committee was already so burdened with labor that it could not undertake the task, and another Senator moved that the Committee on the Judiciary undertake it. My gifted friend behind me [Mr. Carpenter] is a leading member of the Judiciary Committee, and I am the humblest of its members; and, therefore, had it been a wish of his or of mine to participate in this investigation, the Judiciary Committee was the very forum for us; yet, neither of us proposed or supported the motion to give the committee the power. Another committee was proposed, and now I refer to the

honorable Senator from Ohio who sits farthest from me [Mr. Thurman], who said that the Committee on Printing or on the Rules, I am not certain which—he will know which—that one of those committees should investigate the matter.

After all these suggestions it was that a special committee was proposed, not by me, not by my honorable friend behind me, but by voices in different parts of the Chamber proposing it. This suggestion met with general favor, and then it was, and not till then, that having paper before me, and in the midst of writing a letter, I reduced the resolution to writing at the suggestion of several Senators. Sitting here at my desk I penciled the form of the resolution, and it was taken by another Senator, not, I think, the Senator from Wisconsin at first. This was the “preparation” of the resolution by me, after the matter had been discussed and the suggestion of a special committee had superseded other motions. Does the Senator from Massachusetts, even if no rule confronted him, deem it fair to come here in the face of my statement made an hour ago, and assert that which, but for the explanation I now make, would carry the idea that I drew the resolution as an original act of my own, that I proposed and led and originated the investigation? A statement literally true is often the most hurtfully false, and I beg to say to that honorable Senator that when, with or without rules of confidence, he deals with the feelings, the rights, and the reputation of other men he should see to it that he weighs in more exact scales and with less feverish hand the statements that he makes.

Mr. President, I have no quarrel with the honorable Senator from Massachusetts. I know his amiability, and I know that some of his acts which are hardest to defend, if there are such, grow out of traits which often go with an amiable and easy nature. I will do him the justice to say that I do not suppose he made this statement with malice aforethought in order that misconstruction might fall on me. It shows how dangerous it is to play with edged tools; it shows how much safer we are when we observe the rules of good faith and the rules of this body than we are when we violate them, and violate them in the unguarded manner which I think the honorable Senator, on reflection, will be glad to admit has been the manner of his violation on this occasion.

I know that an effort, a very persevering effort, has been made, which would have been well helped on by the statement of the Senator, however unintentional on his part, had I not heard of it by chance and hastened to correct it—an effort to have it appear to the country that the Senator from Wisconsin, and more especially that I, with some special *animus*, with some preconceived theory as to whom a shaft might hit, had bended our bow and set up a mark for our arrow. A more unfounded statement was never made. Should I adopt the heroic style which prevails here sometimes with regard to such matters I might talk of what is “cowardly” and what is “infamous.” I prefer to say simply for myself—my friend behind me is more than competent to speak for himself—that the allegation has not a shadow of truth, and that until I heard from the Senator from Ohio—meaning now the Senator nearest to me [Mr. Sherman]—that the betrayal of the treaty had taken place—it was on Friday, the publication having been on Thursday—I never heard of the matter in any way. I had never at that time heard any person within or without this body referred to as the guilty agent. I had not in my mind the faintest suspicion of any one when the fact was stated that the betrayal had taken place or when the committee was appointed.

Mr. SHERMAN. The fact was published in the morning papers,

Mr. CONKLING. The morning papers here?

Mr. SHERMAN. Yes.

Mr. CONKLING. This only shows the extent of my ignorance. I had not seen any paper containing it, and when the Senator from Ohio made the announcement I expressed my surprise to Senators around me and inquired as to the fact.

It so happened that the investigation began by the appearance as witnesses, when I was not present, of two young men, neither of whom I knew, neither of whom I had ever known, even by sight, until after they had appeared before the committee and refused to answer. And yet, Mr. President, out of facts, or in spite of facts like these, have come the extraordinary statements—I temper my expression, I prefer not to characterize them—I say the extraordinary statements which have been sent in many directions from this Capitol to the newspaper press.

And now comes the honorable Senator from Massachusetts, with a careless, haphazard, and partial statement, which, but for the fact that I happened to hear of it by accident, and to come into the Chamber to correct it, would have been planted in many places, will be now, perhaps, as a little acorn from which may grow tall oaks of evidence, to show that really, after all, I invented this whole thing, when in truth my entire connection with it, at the point referred to by the Senator, was at the request and suggestion of several Senators around me to put down formally on a bit of paper, after the whole matter had been discussed, a resolution raising a committee, and hand it to somebody else. At this moment I can not say who first took it from me.

Mr. President, I have said enough about this. I congratulate myself that although not present—it happens to me, I find, to be absent sometimes at important moments, though I rarely leave the Chamber—I was apprised with expedition enough to be able to come in seasonably and show how inaccurate was the statement of the Senator as he left it, and how well calculated it was to do injury not only to the cause of truth and friendship, but to me.

Mr. WILSON. Mr. President——

The PRESIDENT *pro tempore*. With the permission of the Senator from Massachusetts, the Chair will state that he has not interrupted Senators when they were repeating what purported to be the proceedings of the Senate in executive session on a certain day, because the injunction of secrecy was removed from the resolution and the votes of that day.

Mr. SHERMAN. Will the Senator from Massachusetts yield to me?

Mr. WILSON. Yes, sir.

Mr. SHERMAN. After the statements that had been made by the Senator from Massachusetts and the Senator from New York, it is the merest and idlest farce to hold in custody two citizens of the United States for betraying the secrets of the Senate or for refusing to disclose their own. There is not a man or woman or child within the broad limits of this great country of ours, wherever this language is spoken, but what will feel that the Senate of the United States ought not to hold men in custody because they betrayed our secrets or refused to disclose their own, while Senators of the United States here, openly, in violation of our rules, betray those secrets, especially when one of the rules declares that the punishment of that shall be expulsion from this body.

I have taken no great interest in this controversy from the beginning. It is true—and since the Senator from New York has stated it I now avow it, and repeat that I will do it again in like circumstances—that when I saw in the morning papers that the treaty of Washington was

published in two of the great papers of this country, and when I looked at the rule which declared that all confidential communications made to us by the Executive should be kept under the veil of secrecy, and that if any Senator or officer of this body betrayed those secrets the Senator should be punished, even to expulsion from this body, and the officer dismissed, I did call attention to the fact; I did ask whether or not any one among us had been violating these rules made by the highest sanction; and, as the Senator states, every member of the Senate concurred in that proposition.

Mr. CONKLING. I did not state it; I beg the Senator's pardon.

Mr. EDMUNDS. The Senator from Massachusetts stated it.

Mr. SHERMAN. I speak of the two Senators together; and because the Senator from Massachusetts undertook to make one statement the Senator from New York goes all round the Senate and discloses what occurred in the Senate Chamber.

The PRESIDENT *pro tempore*. The Chair has already stated that the injunction of secrecy was removed from the resolution and votes of that day by the vote of the Senate.

Mr. THURMAN. That is a mistake.

Mr. SUMNER and Mr. SHERMAN. Not from the debate.

The PRESIDENT *pro tempore*. Not from the debate, but from the votes.

Mr. SHERMAN. So far as I am concerned, I have no desire to conceal my course in this whole matter. I voted for that resolution. I was glad that the Senator from New York drew it, and glad that the Senator from Wisconsin offered it, and glad that the investigation took place. As I stated on that day, if there had been any suspicion falling upon a Senator, or if I had reason to believe that any Senator of the United States had violated the obligations imposed upon him by this rule, no man would be more ready to punish him severely than I. But, sir, the moment the first testimony was introduced in this Senate in open session showing substantially that no Senator had violated the confidence reposed in him by the Senate, and that this treaty was purloined or taken or obtained in some way, apparently without the knowledge or sanction of any Senator, and when the testimony itself showed that the whole extent of this rule had exhausted itself, there the investigation ought to have stopped.

I say, therefore, that I am proud that I was one of fifteen who were anxious then to arrest this investigation, because we had no power to pursue it one step beyond the vindication of our own honor and the character and reputation of the officers of this body. Sir, this Senate Chamber has no power in the Constitution or the laws to hunt up, investigate, accuse, and indict citizens of the United States. We may enforce our rules, even to the penalty of expulsion; but we have no right to indict, accuse, and arraign any citizen of the United States; and I believe that when these witnesses had disclosed sufficient to show that no Senator had violated the trust reposed in him by his position, that no officer of the Senate had violated his duty, there the matter ought to have stopped. But even then I did not see proper to participate in the debate. I did not care for it. I was absent during the two days when the witnesses were arraigned before this body. If I had been here present I never would have voted to continue them in custody a single hour after they had made substantial answers to the material questions involving the character of Senators of the United States. So, from that time to this, I believe we have been in a false position. Our investigation, although not in terms by the resolution offered by the Senator from Wisconsin confined, was by law and

by our rules confined to the conduct of our own members. When we went beyond that we went beyond the spirit, purpose, and object of any such investigation.

Mr. President, these men who have been thus confined I have no doubt have been guilty of a technical contempt of the authority of this Senate, because the bare legal proposition is true that these witnesses had no power, no right, to use a legal phrase, to judge as to the materiality of the questions put to them, and therefore, when questions were put to them going to the extent of an examination into the conduct of others outside of the Senate Chamber or officers of the Senate, they had no right to put in this plea or this objection. Their legal duty was to answer the questions. But I say that when we, the Senate, traveled beyond the object of the inquiry we were equally guilty of violating the spirit of the law. There is no doubt of that.

Mr. CARPENTER. Will my friend allow me to ask him a question?

Mr. SHERMAN. Certainly.

Mr. CARPENTER. Do I understand the Senator from Ohio to maintain that after Mr. White had answered that he knew from whom he obtained that treaty, in asking him who that person was from whom he obtained it the committee were traveling beyond their jurisdiction in investigating the subject committed to them?

Mr. SHERMAN. I am not to be drawn into any arraignment of the committee, because I have no doubt they have done what they considered their duty; but, in my judgment, although the language of the resolution would have justified them in going farther, although they were justified by the clear words of the resolution probably in extending this inquiry beyond the general purpose I have stated, yet the object of the inquiry was to ascertain the conduct of Senators and officers of this body, and they had no right to go beyond that without violating the spirit, the very basis and groundwork of our organization, which is far from being a grand jury, but is a high deliberative body, having no authority to punish any one except ourselves and our officers.

Mr. President, again I repeat—and I come back to that question—we are about to adjourn; after our adjournment there is no power in the Senate to hold any man in custody. The mere contrivance by which you would continue a committee of this body to hold citizens in custody is a sham that a justice of the peace would ride over rough-shod. There is no court or tribunal in this land that in the face of the parliamentary law and the organization of this body would refuse to discharge these men from custody the moment the declaration is made that the Senate is adjourned *sine die*. Therefore, when you pass a resolution to release these men you do nothing, because you have no power to hold them longer than that; the statute turns them over for trial according to the course of the law, and your power is exhausted, as it seems to me.

Mr. EDMUNDS. May I put my friend a question? I ask whether he thinks the imprisonment of Woods by the House of Representatives for three months after it adjourned was illegal?

Mr. SHERMAN. I do think it was illegal, and I believe—and I have inquired—that that is the only precedent in the history of this country.

Mr. SUMNER. Or any parliamentary country.

Mr. SHERMAN. I do believe it was a gross violation of the constitutional rights of that man, and I do not think this Senate has a right to hold these witnesses or any living mortal man in custody one hour beyond our adjournment; and that is the plain meaning and language of parliamentary law, as old as the English Parliament. The House

of Commons has had many cases of this kind, and always when an adjournment took place the witnesses and the prisoners went acquit. In some cases in England, where persons had been guilty of grave contempt of Parliament, they were discharged at the end of the session. Therefore I say that the adoption of this resolution, instead of being dependent upon the guilt or misconduct of these two gentlemen named, depends on our own power, because when we pronounce ourselves adjourned *sine die* we have no power over these witnesses.

Mr. EDMUNDS. Why is that so? Give us the philosophy of it.

Mr. SUMNER. It was argued the other day.

Mr. SHERMAN. I do not wish to extend that argument, and I would not have said one word in regard to it now but for the fact that in some way or other the Senator from New York felt hurt because the Senator from Massachusetts unwittingly alluded to him. Well, sir, what the Senator from New York did that day he was perfectly justified in doing. It is what I would have done with cheerfulness if my attention had been directed to it. And what the Senator from Wisconsin did that day was perfectly justified by his position here. What was done that day was done by the unanimous vote of every Senator. Why, then, draw ourselves into these personal controversies, into these disclosures of what occurred in executive session, into arraignments of each other, when what we did was the common work of all?

I hope, therefore, that we shall let go these two gentlemen who, guided by what they regard as a sense of honor, have refused to answer questions that did not affect the character or dignity of this body; let them go, because the very moment we go ourselves our power over them is at an end.

Mr. SUMNER. Mr. President, the Senator from New York [Mr. Conkling], in correcting what was said by my colleague, has fallen into an error with regard to myself, and I am the more astonished at it because on one occasion he did quote me correctly. He quoted what I said when this resolution was pending, or immediately before its introduction, on one occasion differently from the way in which he has stated it now, and I can remind him of it precisely. I do not attribute to the Senator any intention to do me injustice; but he has fallen into error.

Mr. CONKLING. I interrupt the Senator to assure him that I shall be glad to make the correction myself if I have done him any injustice.

Mr. SUMNER. My language was, as I think the Senate will remember, "Institute this inquiry or give up the rule;" and my emphasis was particularly on "give up the rule." "Institute this inquiry or give up the rule;" and I proceeded to state in executive session something of the experience of the Senate on other occasions, concluding again with an exhortation to "institute the inquiry or give up the rule." I was perfectly willing and, indeed, desirous that the inquiry should proceed to such a point as would determine whether any Senator or official of this body was implicated. My friend from Missouri [Mr. Schurz] reminds me that I introduced a resolution to give up the rule. It is an old habit of mine in this body. The first year that I had the honor of a seat in this Chamber I sustained a motion by my excellent friend, Mr. Chase, to abolish the rule of secrecy.

Mr. CONKLING. Will he be good enough to point out to me the error into which he thinks I have fallen?

Mr. SUMNER. The Senator omitted the last and operative words of what I said. He stated that I said, "We must now stand on the ancient ways." I think I made use of no such expression in that connection.

The PRESIDENT *pro tempore*. The Chair desires to state, with the

permission of Senators, that the injunction of secrecy was removed from the resolutions and from the votes of the day referred to. At first the Chair, according to his recollection, supposed that the injunction of secrecy had been removed from all the proceedings of that day, but with the record before him the Chair will now feel bound to interrupt any Senator who quotes the debate in executive session.

Mr. SUMNER. I should not have alluded to it except that certain words were attributed to me which in their connection I did not use.

The PRESIDENT *pro tempore*. That the Senator has a right to say.

Mr. SUMNER. The Senator from New York, therefore, unconsciously does me injustice.

Mr. CONKLING. I have a right also, if the Senator permits me, as he does at this moment, to call his attention to the fact that I did not refer in any way to his view about the rule. His resolution to rescind it I have a right to refer to, because it was offered, the Senator will remember, in open session, and I took occasion to offer an amendment to it myself to make it broader; and the Senator knows that he and I are not apart, at least in regard to our judgment that we must either reform abuses or abolish the rule. I referred merely to that part of the Senator's remarks which related to the pending subject, and surely I see nothing in what he has said in any way conflicting with my statement; and I remind him again, if I may without violating the rule, that he informed us that there had been no instance in the history of the Government in which such a thing as this had been passed over by the Senate, but that they had always made the effort to find out how it was.

Mr. SUMNER. I think there again the Senator puts into my mouth something that I did not say. I believe I am justified in that. I think that the Senator does not faithfully report; I do not doubt that he intends to faithfully report; but when he undertook to place certain words in my mouth which at best were only half a sentence, an unfinished sentence, then, I submit, he did not do me justice. I submit he should have gone on and stated what every Senator about me knows, not merely from my declarations in executive session, but in public session and in private conversation, that I am against the rule, that I have always been in favor of this proceeding, so far as I have given it any sanction, simply as one means of developing the absurdity of the rule.

I foresaw much of this consequence when we began; but I was perfectly willing that it should go on, knowing that if we succeeded in finding the offender it would be just; if we did not succeed, if we ran against the usual impediment, then the rule would be exhibited in its imbecility. So it has been exhibited; and therefore was I right in my original idea, and I hope that the Senator from New York, if he has occasion to discuss this again, will bear in mind that if I said anything in executive session, and I do not pretend to say that I did, it was to present the alternative proposition, "Institute this inquiry, or give up the rule," my special emphasis being on "give up the rule."

Now, sir, I am sorry to be diverted from the main question, which is the liberty of two fellow-citizens. I hope the Senate before it adjourns will by formal vote give them that liberty, and I hope that it will not, even by implication, hand them over to any further custody. We have gone far enough in this inquiry. When Senators say, "Shall the Senate retire; shall the Senate confess that it can not prevail in this controversy," my answer is, What good object can be attained by pursuing the inquiry? "Better late than never;" better give up a business in

which we ought to have stopped the moment the impediment showed itself.

Mr. THURMAN. Mr. President, I shall say nothing of what took place in executive session; I was certain from the first that the injunction of secrecy had not been removed from debate; but this I can say without violating any rule, that I know of no member of this Senate who is more responsible than every other member for the institution of this investigation, for the appointment of the committee. If there was responsibility upon one, there was responsibility upon all, and, so far as I know, an equal responsibility; for how could it be otherwise? What Senator would have dared to get up here and oppose an investigation that touched the honor of the body, as its honor was touched when the question was whether a Senator had not committed an offense which subjected him, if guilty, to expulsion from the body? When that was the question how could any Senator dare for a moment not to give it his support?

Mr. President, no particular responsibility rests upon anybody. Without saying how the vote stood or anything about the vote, without stating what was said, it is sufficient to know that the honor of the Senate required that committee to be appointed and that it was appointed. I have seen in a newspaper, I do not remember which newspaper it was, and in more than one—I think it was the Tribune, and in more than one number—statements that the Senator from New York nearest me [Mr. Conkling] was the instigator of this investigation, and that the Senator from Wisconsin [Mr. Carpenter], to use the language that I believe was used in the article, was his mere cat's-paw. The Senator from Wisconsin the cat's-paw of anybody! That is only calculated to excite a smile of contempt in this body, which knows his ability, knows his independence, and knows that he is not the faithful servant of any man whomsoever.

I did not understand the Senator from Massachusetts who spoke first [Mr. Wilson] as intending to repeat that direct statement made in the newspaper. If he had I should have felt that the Senator from New York was quite justified in the heat that he exhibited in his reply to it; but I did not so understand him. Why he made the remark at all it is for him to explain, if he has not sufficiently explained it. But so far as the question of responsibility is concerned, I repeat that no Senator on this floor is responsible any more than another.

A word now in regard to what took place afterward in open session. We were bound to raise that committee; we were bound to see that the investigation took place. Finally the question came before the Senate, what shall we do with two witnesses who have refused to answer proper questions? Then the debate was in open Senate, and then what took place? Then the question was whether the Senate should take another step, whether it should proceed to the utmost extremity of the law against those witnesses; and when it came to that question I did think, as much as I was in favor of the investigation, that it was not a case for proceeding to the ultimate extremity of the law. Then I did think that the course now indicated by the Senator from Illinois [Mr. Trumbull], to turn these people over to a court of justice to be prosecuted under the statute, was the course that was best in itself and most likely to preserve the dignity of the Senate; and now I think a majority of the Senate are of exactly that opinion.

That is exactly where I differed from a majority of the Senate, not at all in censuring the investigation, not at all in censuring any member of the committee, much less censuring the committee. It is nothing of

that kind at all; but as a matter of mere discretion—for it was a matter of discretion in the Senate whether it would proceed to the utmost extremity of the law against these persons—exercising my own judgment upon that question of discretion, I thought it was best not to do so, but to turn them over to the court; and if my judgment had been followed they never would have been imprisoned an hour. That is what I thought was right; but I do say again that my colleague is mistaken when he supposes there is the least ground in the world to arraign the committee as having transcended their power.

The committee have not transcended their powers at all. They asked no question that was not a proper question to be asked. Suppose they had been limited to the inquiry, “Did a Senator disclose the treaty?” in Heaven’s name, are they to take the answer of the witness as conclusive that a Senator did not? Were they not bound to find out from whom he got it, if only for the purpose of testing whether that witness told the truth in saying that no Senator was implicated? They were bound to ask him from whom he got it. And when you come to consider that if the witness had disclosed the man and they had brought that man up he might have fixed it on a Senator, it is perfectly plain that it was a proper question. No lawyer can doubt it for a moment.

The committee has not transcended its powers in the least degree in the world; and if this matter is to be disposed of now, as I hope it will be disposed of, I trust that no man will say that the Senate means to rebuke the committee. If anyone shall say so, he will do the committee a gross and flagrant act of wrong.

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Mr. FRELINGHUYSEN. Mr. President, I do not rise to make any apology for anything that I have done in reference to this matter, or to make any confessions. I believe I have acted with the Senate and with the committee from the beginning, and I desire to take my full share of the responsibility, if any there be. I have no sympathy with the idea that there is nothing wrong in offering a reward for the acquisition of a private paper, particularly if that paper is private by the laws of the land. Nothing wrong! Why, it might imperil the most sacred public interests by its disclosure. It is a temptation to all those who by possibility in confidential relations have access to the paper to purloin it; and, as we see, it subjects those to whom the paper is confided to the charge of having dishonorably violated that confidence for a bribe. I cannot understand how anyone can fail to see the wrong in such a proposal. And I have as little sympathy with those who think it unimportant whether a witness, when brought before the highest tribunal of the country, be required to answer the questions lawfully put to him. Treat that as unimportant and you break down the barriers that protect the interests of society, life, reputation, liberty, property. It would not answer for the Senate to set such an example to the other tribunals of the country.

But, Mr. President, I doubted when this subject was before the Senate heretofore whether the Senate had the lawful right to hold these witnesses in custody after the termination of the session, and was under the impression that the resolution did not necessarily have that effect. Such investigation as I have since been able to give the question confirms the doubt then entertained. The Senate may not violate the law even to constrain others to respect it. We must obey more carefully than the humblest individual in society.

There is a vast difference between the case of a person being held in prison as a punishment for an offense of which he has been convicted

and of one who is held there to induce him to obey an order of a legislative assembly. When the custody is as a punishment the prisoner subjected to it must first have had his trial, the benefit of witnesses and counsel; the proceedings of the tribunal are subject to be reviewed if the accused desires. None of these conditions exist in reference to one who is in custody for contempt. The difference is recognized in the legislation of the several States.

In the State constitutions there is no limitation of the power of the legislature to enact laws imposing punishment for crime, but in some eight or ten States the constitution restrains legislation imposing imprisonment for contempt. In Illinois and Indiana it may not continue more than twenty-four hours after the termination of the session; in Tennessee, Alabama, and Mississippi, forty-eight hours, and in Louisiana the imprisonment must not continue more than ten days after the session ends.

No one can observe these constitutional provisions and doubt that there is a recognized difference in the two imprisonments, or doubt that the power to imprison for contempt is much more limited than the power to imprison for crime. If there was no limit to imprisonment by the legislative body the citizen might, without trial, counsel, jury, witnesses, or possibility of review, be perpetually incarcerated. This would be tyranny; and hence these constitutional provisions.

Then, we find that the House of Commons can not hold one for contempt, as has been repeatedly adjudged, after the termination of the session; while in the House of Lords one may be held after its legislative session has terminated, because it is a court and in continuous session, and at any time the witness can come forward and purge the contempt. Our Senate in this regard is much more analogous to the House of Commons than to the House of Lords.

Again, it will not be pretended that the committee may commit to custody during the recess of the Senate one who refuses to answer. The discretion of the Senate must be exercised before the offending witness can be imprisoned. The resolution heretofore adopted authorizes these witnesses to be brought before the committee and to answer certain questions. Suppose they do answer them, and insist that they have complied with the resolution, and under the order of the Senate are entitled to their discharge.

The committee, however, says that the witnesses have not properly made answer, and refuse their discharge; are they not continued in custody by the discretion of the committee rather than that of the Senate?

Further, sir, we have on this subject an express authority. Cushing, in his *Law and Practice of Legislative Assemblies*, uses these words in the text:

In this country the power to imprison is either incidental to or is expressly conferred upon all our legislative assemblies, and in some of the States it is also regulated by express constitutional provision. Where it is not so regulated it is understood that the imprisonment terminates with the session.

Can any one say that the power to imprison claimed is, in the light of the considerations submitted and of this authority, free from doubt? The doubt settles our action; for by the common law a doubt is to be given in favor of liberty, and especially is that true of the common law as applied in this country.

But, Mr. President, we have legislation on this subject. The two Houses of Congress have provided for just this case, not by saying, as in the State constitution, that witnesses shall not be held for contempt

after the termination of the session, but by saying that the President of the Senate shall make a certificate describing the case, and hand it over to the attorney of this District for prosecution, and that conviction shall be followed by fine and imprisonment. That legislation is equivalent to saying the Senate shall not hold for contempt after the termination of the session. The case is otherwise provided for. One more remark——

Mr. EDMUNDS. May I ask my friend a question? The question that I intend to ask, and I ask it merely for information, because I did not intend to interrupt my friend, is this: whether he means to say that this statute diminishes the power of the Senate, either during its session or after its session, over the contumacy of a witness, as a matter of law?

Mr. FRELINGHUYSEN. That is a fair inquiry. The existence of the statute certainly does not diminish the power of the Senate during its session. I think it does make the case stronger in favor of the position that the power of the Senate to imprison terminates with the session. Without the statute, from analogy to the rule in the House of Commons and to the constitutions of several of the States, from the parliamentary law as laid down by Cushing, it is well settled that the power of the Senate to imprison terminates with the session; and when, in addition to all this, we find that both Houses of Congress have contemplated just the case before us and have provided a remedy, and told us what to do with the contumacious witness, in my opinion it is clear we can not continue the imprisonment.

The effect of the statute is this: by parliamentary law you can not hold a witness after the end of the session, and here is a remedy. The case is by reason of the statute much stronger in favor of the position that our power terminates with the session.

Mr. EDMUNDS. Why so?

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Mr. EDMUNDS. I should not have asked the indulgence of the Senate at this moment to reply to my friend from New Jersey, but for the statement that he made and the inquiry that I put to him. Now, the whole fallacy of this notion about imprisonment—because this is merely a matter of principle, and I only say what I am about to say, for the record—is this: when a witness is held by the House of Commons (taking that for the highest possible illustration), in order to compel him to testify before a committee, the moment the power of that committee fails the power of examining fails and he can not be held any longer. Therefore, when any body that is competent to continue a committee during its recess does continue that committee it is competent for that body, as an incident to precisely the same power, to continue the custody of a witness until he answers before that committee a proper question.

My friend from New Jersey says that the committee can not judge of what is a proper question. I agree to that; it must be the Senate, and the Senate has decided that a particular question is proper. The witness says he has answered it, and my friend says the committee says he has not. What then? Then the law steps in, if he wishes to try the question, and determine whether he has obeyed the order of the Senate or not, and a judge or a court immediately determines then whether he has complied with the order of the competent authority that had imprisoned him, just as a court would do in a judicial investigation before itself.

Mr. President, I do not care about this for this particular occasion; it is a mere matter of principle as the thing now stands, and as a mat-

ter of principle I expect to vote to continue the custody of the gentlemen who are in custody, because I think that is the law of the case and our duty under the circumstances. Of course, personally to them I have nothing to say. They act upon what they think to be right. I have no quarrel to make with them; that is their affair; but the time will come when this Senate will be sorry if it solemnly decides that it has no power over a person who sets the law, not the Senate, who sets the public interest, not a private curiosity, at defiance. The Senate will be sorry indeed if it decide beforehand that we have no power over them unless we shall continue in continuous session. I say this, not as to witnesses merely, but as to a thousand things that occur in the course of administration.

Therefore, as a matter of principle I merely wish to enter my protest against the suggestion of my friend from New Jersey, that our power over this subject must terminate with this session under the circumstances that now exist.

MAY 26, 1871.

[Congressional Globe, p. 906.]

RELEASE OF RECUSANT WITNESSES.

The PRESIDENT *pro tempore*. The unfinished business of yesterday is now in order, which is the resolution of the Senator from Massachusetts (Mr. Wilson) to discharge Z. L. White and H. J. Ramsdell from custody at the close of the present session of Congress, and the pending question is on the amendment of the Senator from Kentucky (Mr. Davis), which will be reported.

The resolution was read, as follows:

Resolved, That the Sergeant-at-Arms of the Senate be, and he is hereby, directed to discharge Z. L. White and H. J. Ramsdell, now held in custody by him by an order of the Senate, immediately upon the final adjournment of the present special session of the Senate.

The amendment of Mr. Davis of Kentucky was to add the following proviso:

Provided, That this resolution shall not be held or construed to interfere with any legal proceedings which may be instituted against the said White and Ramsdell upon the certificate issued by the Vice-President under the third section of the act of January 24, 1857.

Mr. CARPENTER. Mr. President, it was my desire last evening to address the Senate for a few minutes on some questions involved in this matter, but I felt too unwell to do so then, and I regret to say that I am still in feeble health this morning. I shall therefore detain the Senate but a very short time.

Mr. HARLAN. If the honorable Senator will pardon me, I think it necessary to have an executive session of the Senate, and perhaps it would suit his convenience, being unwell, to have that session before he proceeds.

The PRESIDENT *pro tempore*. Does the Senator from Iowa submit a motion?

Mr. CARPENTER. I think I shall occupy so short a time that I had better speak now.

Mr. HARLAN. Then I give notice that I shall make the motion at the close of the honorable Senator's speech.

Mr. CARPENTER. Mr. President, Mr. Webster is said once to have been asked, in relation to certain accusations against him concerning an important public transaction, why he did not vindicate himself.

His answer was that he never cleared his sidewalk until it had done snowing. There was great wisdom in this reply. Every man should wait until he hears all that malice can suggest against him on a given subject and then meet the allegations. But inasmuch as the Senate is soon to adjourn, and I am threatened with everlasting denunciation by the press, I am compelled to vindicate myself while the storm is still raging.

The circumstances under which this investigation was initiated were stated in the Senate yesterday. I was not aware even that the treaty had been published until informed of it in the Senate on Friday by the Senator from Ohio [Mr. Sherman]. My recollection is that the resolution ordering the investigation was handed to me by the Senator from Nevada (Mr. Stewart), who requested me to introduce it, and I did so. No Senator objected to an investigation; on the contrary, every Senator demanded investigation, and the resolution passed unanimously. Having been appointed chairman of that committee, it became my duty, in common with every other member of the committee, to prosecute a thorough investigation of the subject committed. No sooner was the fact published that the committee had been raised than I began to receive anonymous letters, threatening me with the utmost vengeance of the press if I should dare to proceed with the investigation so ordered. I was warned that the public sentiment of the country is controlled by the press; that the Washington correspondents of the various newspapers could make or break any public man; that the investigation was regarded as an invasion of their privilege to obtain news, and that in the determination to baffle the investigation they stood a unit.

Well, sir, notwithstanding these warnings, I concluded to discharge my duty as a member of the committee and take the consequences, well knowing that omission to do so would justly subject me to public contempt.

The committee assembled and entered upon the investigation ordered by the Senate. The witnesses called, who knew the facts, refused to testify. The committee thereupon reported to the Senate that the witnesses were in contempt, and recommended that the Senate should compel them to purge themselves of the contempt and answer the questions. This report was concurred in by all the members of the committee—the Senator from Massachusetts (Mr. Sumner), the Senator from Illinois (Mr. Trumbull), the Senator from New York (Mr. Conkling), and myself, the Senator from Kentucky (Mr. Davis) not being present.

In the verdancy of my brief service in official life I supposed that after the Senate had ordered an investigation and the committee had entered upon it, and the investigation was arrested by the contemptuous refusal of witnesses to answer proper and pertinent questions, there would be no difference of opinion among Senators in regard to compelling obedience to the orders of the Senate. I was led into this serious error by my former experience in courts of justice. It often happens that a court is divided in opinion as to the propriety of rendering a judgment or the granting of an injunction, or any other matter that may be presented for its decision; and judges may dissent and publish at length their dissenting opinions. But after the judgment of the court has been pronounced the dissenting judges, in all subsequent proceedings, as well as those who concur, may safely be relied upon to enforce the judgment of the court and punish disobedience.

This course is indispensable to the administration of justice. The majority of a court must, in the nature of things, settle the question whether an injunction should issue; and that question being settled, every judge feels that disobedience must be punished. A judge who had dissented from the judgment of the court granting an injunction would commit an impeachable offense who should thereafter refuse to punish its violation upon the ground that he was right and that the majority were wrong in ordering the injunction. No judge could stand a moment in the estimation of the bar who should pursue such a course, but would be regarded as a dishonored man, an unworthy judge.

Blinded by my want of legislative experience and by the little knowledge I possessed of judicial proceedings, I was led into the folly of supposing that upon the precise and mere question of whether a witness who had refused to answer a proper question in an investigation ordered by the Senate should be compelled to answer, and whether he should be committed to jail until he did answer, there could be no difference of opinion in the Senate; and that the resolution ordering the witnesses to stand committed until they should answer would be supported by every Senator, without regard to his private opinion as to the propriety of the investigation itself which the Senate had ordered, I introduced a resolution to that effect.

But no sooner was the resolution introduced than the darkness of my mind was illuminated, and that so suddenly and so violently as very nearly to obscure my perceptions altogether. I instantly discovered, greatly to my surprise, that the precise question, Shall the contumacious witness answer the proper interrogatories put to him by the committee? was the only question which was wholly immaterial. No Senator questioned that the Senate had the power to order the investigation; no one denied that the questions put by the committee were pertinent and proper, and that the witness was bound to answer them: no one denied that he was in contempt for not answering them. But all these admissions, which I regarded as conclusive to show that the resolution ought to pass, were pronounced by some Senators to be wholly immaterial.

The habits of a lawyer's mind induce him to confine his thoughts to the precise subject to be determined. But, sir, a lawyer is a poor narrow-minded minister of mere justice. He comes to regard all men as bound by the law, and seems to think that the law ought to be enforced impartially; that the high and the low, the rich and the poor, the lettered and the unlettered, must alike submit to the laws of the land. And if the law declares that any witness on the stand shall answer a certain question, without regard to what may be the rank, wealth, power, learning, occupation, or profession of the witness, why, sir, a mere lawyer is degraded enough to think that the witness must answer. A lawyer believes that what the law declares to be criminal is a crime, whether committed by a great man or a small one, a powerful man or a weak one, a rich man or a poor man; that crime consists in the violation of positive law; and that whoever violates such law commits a crime and merits condemnation and punishment. A lawyer comes, after long years of practice, to be, what the law is, no respecter of persons. He comes at length even to the belief that whether an offense be committed by a peer of the realm, or an outcast of society skirmishing for an existence in the purlieus of our civilization, punishment should follow.

Now, sir, mark the distinction between a mere lawyer and a great

statesmen. You submit to a body of statesmen the single question, Is a potato a vegetable? and you thereby open for discussion the tariff and free trade, corruption in office, and reform in the civil service; you open the entire animal and mineral kingdoms, the creation of the world, the fall of man, and original sin; and while the qualities and character of the potato are entirely ignored, your statesmen sit on cushioned chairs, as Milton's devils sat apart, while their chief had gone to contrive some villainy—

And reason'd high
Of providence, foreknowledge, will, and fate,
Fixed fate, free will, foreknowledge absolute;
And found no end, in wand'ring mazes lost.

It is the characteristic of a statesman that he can not be confined to a particular subject or a single theme. The question whether a witness should be compelled to answer a proper question brings the entire universe under his investigation; and scorning a small subject, he soars and walks—

Like light the clouds among

When this report was presented we were in the first place encountered by a motion from the Senator from New York [Mr. Fenton]. I read from the *Globe* of the 18:

MR. FENTON. Mr. President, I do not like this resolution very well, and am not certain that I shall support it.

That was the resolution to commit for contempt.

I will send to the Clerk's desk a substitute.

The substitute is as follows:

That the President of the Senate be directed to propound to Z. L. White and H. J. Ramsdell, now at the bar of the Senate, the following interrogatory:

"Did you receive the copy of the treaty of Washington, which you have sworn you telegraphed to the New York Tribune, from any Senator of the United States, the clerk or secretary of any Senator, or any member of the family of any Senator, or from any officer or employé of the Senate or any member of the family thereof?"

And the said White and Ramsdell be directed to return an answer under oath in writing to this interrogatory.

I believe the Senator from New York has not the misfortune to be a lawyer; his mental processes are not trammelled by the technical rules familiar to the profession; he is altogether a statesman. And the question which he proposed for answer by these witnesses, if it had been framed by a lawyer, would have been regarded by every member of the profession as a studied and artful attempt to stifle further investigation. What would you say of a witness called in the trial of an indictment against John Smith for stealing a horse who should present himself and say, "May it please your honor, I am called as a witness on the trial of John Smith for stealing a horse; you have no right to try any other question. I am willing to file a statement in writing, on oath, that John Smith did not steal the horse. Beyond that you have no right to inquire, and counsel have no right to interrogate me; and beyond that I will submit to no examination. I will not permit counsel to cross-examine me as to the foundation of my knowledge, or the correctness of my conclusions; and you have no jurisdiction to subject me to any such cross-examination, because you are limited to the inquiry, Did John Smith steal the horse?" There is no doubt, sir, that a judge, on being satisfied that the witness was not a lunatic, would order him to answer all proper questions, and send him to jail if he refused.

If a copy of this treaty was furnished by any Senator for publication, in disregard of the rules of this body, which prescribe expulsion as a punishment for such act, it is not to be supposed that he handed it in person to the reporter. Therefore the answer of the reporter that he did not receive it from a Senator, accompanied by a refusal to answer from whom he did receive it, does not exonerate the Senate, nor does it enable the committee to ascertain, what the Senate desires to know, how and by whom the treaty was made public.

This publication may have been made from a Senator's copy, without any fault on his part. It may be true that without negligence or knowledge on his part his copy was purloined and used; and this fact ascertained would exonerate every member of the Senate. But the witness, after answering that he knew from whom the copy was obtained, refused to state from whom he procured it; and it was proposed by the Senator from New York [Mr. Fenton] that the witness should only be required to state from whom he did not procure it, and not from whom he did procure it. Had the witness answered that he procured the copy from John Smith, John Smith could have been called to prove from whom he obtained it; and thus the responsibility for the offense could have been fixed upon the individual who committed it. But to excuse the witness from answering such question was simply to preclude further investigation. Of course the Senator from New York [Mr. Fenton] is as anxious as any Senator that the most thorough and searching investigation should be made upon this subject, but he will pardon me for saying that his method would not secure the desired result.

To repeat what I have said, when I offered the resolution which directed that the contumacious witness should be committed to jail until he answered the pertinent and proper questions by the committee, and which he had refused to answer, I assumed that even if there had been a difference of opinion among Senators as to the propriety of the investigation—which there was not—there could be no difference of opinion as to the obligation of the witness to answer. Before preparing the resolution, desiring to observe all righteousness of form, I requested the Secretary of the Senate to furnish me some precedent and he handed me the volume containing the proceeding in Hyatt's case. In that I was extremely unfortunate.

The Senator from Massachusetts [Mr. Sumner] was a member of the committee, and concurred in the report that Messrs. White and Ramsdell were in contempt for their refusal to answer proper questions. He had the kindness to admonish the witnesses when before the committee that their refusal would subject them to punishment for contempt. But, sir, the mere fact that the resolution was drawn according to the precedent from Hyatt's case awakened in the mind of the honorable Senator a long train of gloomy reflections against slavery and the prosecutors of the investigation as to the abolition invaders of Virginia who entered that ancient dominion by the way of Harper's Ferry; and the honorable Senator sprang into championship of these contumacious witnesses against the logical result of the report in which he had concurred, and made what a newspaper of his own State declares to be one of the greatest constitutional arguments of his life.

* * * * *

But, Mr. President, while the pretended imprisonment of these men has been what every one knew it would be if they were not committed

to jail, there are aspects of this matter not to be laughed at, but of grave and serious import. They who are charged by the people with governmental powers to be exercised for the public good may not innocently suffer those to be disregarded or treated with contempt. It is not your privilege as an individual Senator, but it is the privilege of the American people, that every tribunal known to the Constitution and laws, the courts of justice, and the Houses of Congress, should preserve, for exercise in the proper case, every power with which they are invested. The judge on the bench who permits the process of his court to be disobeyed brings the authority of his court into public derision and contempt, and thus and thereby enfeebles the administration of justice and weakens the safeguards of civil society.

The Senate has ordered this investigation. It is a case clearly proper for the Senate to investigate. The investigation has been obstructed and arrested by the criminal refusal of witnesses to testify. Now, sir, if you trifle with these men you destroy the power of the Senate ever to accomplish another investigation, no matter how indispensable it may be to the public good. For their contumacy they were subjected only to a nominal imprisonment, and now it is proposed to release them from that. The immediate effect of this is the recorded admission that you can not make an investigation which you have decided you ought to make, and which everybody knows you have not made.

But, sir, humiliating as this confession would be, it is but a small part of the evils to result. It has been said that the Senate is vindicated, or to quote the Senator from Indiana [Mr. Morton], the Senate ought, from the testimony obtained, to be "reasonably satisfied" that no Senator has been at fault. Why, sir, what do Senators mean by "vindication?" The witnesses who know from whom this treaty was obtained, and without whose testimony it can not be ascertained whether any Senator has offended, refuse to testify. You decide that they are in contempt and must answer the questions, and to compel obedience you order them into nominal confinement. They still refuse; the fact you ordered to be ascertained remains unknown; the tenderness of our hearts overcomes the conclusions of our reason, and they are released. Is this vindication? On the contrary, is it not doing what the Senator from Ohio [Mr. Thurman] said the other day would justly subject the Senate to ridicule and public contempt?

The country will know and say, if we pursue this course, that the Senate dares not proceed in the proper exercise of its unquestioned power, and that we have been driven from the performance of what we have ourselves declared to be our duty by the clamor of ten or fifteen young men in Fourteenth street, who, with their hands on the wires, threaten to misrepresent and malign us individually if we do not abandon this investigation. Is it possible that any Senator can prefer the justly merited contempt of the people rather than the effect of falsehoods, few or many, maliciously circulated by the press?

But it is said that the liberty of a citizen is involved. The liberty and life of a citizen are precious things; but the liberty and the life of a citizen when weighed against the public good are of small moment. Every man sent to jail for violating an injunction is deprived of his liberty. Does it follow from this that a court ought not to compel obedience to its judgment?

You have appointed a committee to investigate southern outrages, and it is about visiting the South to enter upon the discharge of its duties. Their first witness may be a member of the Ku Klux Klan. He

will state that he is under solemn pledge of honor to his associates not to reveal their secrets, and that to do so would subject him to infamy among them. Then, sir, he would point to these proceedings, and remind the committee that the Senate itself had decided, in substance and effect, that a witness ought not to be compelled in such case to violate his personal honor by testifying. And although the committee might inform him that his reason did not amount to a legal excuse, and he must answer the question, yet the committee would, in common honesty, be bound to say to him, that, if he refused to answer the question, all the Senate would do to him would be to subject him to nominal custody of the Sergeant-at-Arms for a few days, and then release him.

In these cases we must act by ascertained rules, and apply them impartially to every contumacious witness that may be brought before the Senate. We can not have one rule for the people of one State and another for others. If a witness refuses to testify we must determine what the consequences of such refusal shall be, and then proceed impartially in all cases. Any other course would be tyranny, pure and simple. If you have the power to continue a committee after the adjournment, you can authorize the committee to take testimony. Whenever the Constitution and laws authorize a thing to be done, the power is always implied to make the doing of it effectual. A witness summoned before your committee in vacation who refuses to testify commits a contempt of the Senate.

Mr. SHERMAN. If I do not interrupt my friend, I wish to ask him a practical question. I have always understood the law to be that no committee in the recess of the Senate was authorized to commit any one.

Mr. CARPENTER. I did not say that it was.

Mr. SHERMAN. I so understood the Senator.

Mr. CARPENTER. No; I said if you could authorize a committee to sit in the recess, that committee could subpoena a witness before them, and if he should refuse to testify before them he would be guilty of contempt of the Senate, not of the committee.

Mr. SHERMAN. And might be ordered to be arrested by the Senate?

Mr. CARPENTER. Yes, when the Senate convenes. So, too, you may order this committee to sit in vacation for the purpose of taking the testimony of these witnesses, thus furnishing them an opportunity to purge themselves of the contempt.

Mr. President, for these reasons I think that this resolution, if adopted, will be followed by serious and pernicious consequences, far beyond the lives even of these particular witnesses. I should regret to have the country and the world know that the Senate of the United States, the highest tribunal in the land, had less firmness in the performance of an unpleasant duty than would be exhibited by a county judge or a justice of the peace anywhere in the United States. And I should be mortified and humiliated beyond expression to have the world see that a few newspaper correspondents in Fourteenth street, by clamor, denunciation, and falsehood, can arrest the Senate in a course which it had unanimously determined to pursue. Nevertheless, I hope the fate of this resolution will be regarded as a test whether the Senate will adhere to or abandon this investigation. If Newspaper Row is too strong for us let us say so and come down at once. The longer we adhere to it the more ridiculous will be our abandonment of it, without attaining the end for which it was ordered. If we can not stand up and advance, the sooner we lie down the better.

And I am in favor of saying to these witnesses now, either that they must answer these questions, and shall be imprisoned until they do, or else that they have beaten us; let us have peace.

But, if the investigation is to be abandoned, then the Senate ought at once to enter into negotiations with Fourteenth street for a treaty which shall definitely express our respective powers and privileges. No time should be lost. England lost her American colonies by an obstinate refusal to repeal the stamp act. Louis XVI might have saved his crown and his head by timely concessions, still preserving more prerogatives than the kings of England ever exercised. Let us profit by these examples.

If we agree to abandon a portion of our constitutional powers it may be the press will permit us to exercise what is left to us. But, should we persist in claiming all the powers conferred upon the Senate by the Constitution, it may be that these jolly boys in Fourteenth street may become exasperated, and who can foresee the extent to which their demands may reach? If they can compel the Senate to pass this resolution under the circumstances of the case, I doubt not, if they so resolve, and really uncork their ink pots in earnest, they can drive the whole Senate into the Potomac within ten days.

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Mr. THURMAN. If I had not been interrupted I should have been through by this time.

I am so happily constituted, Mr. President, that I can enjoy wit even when I am the victim of it; and I venture to say that no one on this floor more heartily relished the remarks of my friend from Wisconsin this morning that touched me than I did myself; and although there was one little misstatement of fact in this, to wit, that he was speaking of a candidate for the Presidency [laughter], I attribute that entirely to his own friendly feeling and disposition to put me in nomination, and not as a statement of any existing truth.

I enjoyed his remarks, therefore, as much as anybody; but I must beg leave again to differ from him in his estimate of the duty of either a court or a senate, certainly in his estimate of the duty of the Senate. It is true that these witnesses were in contempt, and I did so assert. It is equally true, in my judgment, that we have the power to continue their commitment until they answer. That is also my belief. Whether I am right in it or not every one must decide for himself; but that is my belief.

But then I do say, as I have said before, that the question whether we shall proceed to the exercise of all the powers which are vested in us upon this subject, whether we shall exhaust all the powers of the law in order to get an answer from these witnesses, is a question addressed to the discretion of the Senate, and we are not bound by any rules of logic whatsoever to follow what has taken place by the indefinite imprisonment of these men. It is a question in every such case, is the play worth the candle; is it right and proper under these circumstances—is it advisable under the circumstances—to imprison the contumacious witnesses indefinitely? That is a question which addresses itself to the discretion of the Senate. There is a difference between a court and the Senate in this: if a witness is produced in court by a party and refuses to answer, it is the right of that party to have him committed in order to obtain his testimony, unless good reasons can be shown why he ought not to be committed, and a court may, therefore, be compelled very reluctantly indeed to imprison a witness because it is the right of the party to have his evidence. But it is the

Senate of the United States here that is the party, and as a party in a court of justice may waive his right, may waive any commitment of the contumacious witness for contempt, just in the same way may the Senate of the United States, if it see fit under the circumstances, waive the imprisonment of these men.

Well, sir, looking at this question as it came before us, and exercising that judgment which I was authorized to exercise, that discretion which I was authorized to exercise, it did seem to me that the best thing we could do was not to commit these witnesses under a legislative order of the Senate, but to turn them over to the courts of justice to be indicted under the statute law of the land; and I think there is not a Senator now on this floor but feels that I was right, but feels that the dignity of the Senate would have been far better preserved and the law have been far better vindicated if that course had been taken at the outset; for if I had been gifted with prophecy I could not have spoken more accurately than I did. I beg leave to read a single paragraph from what I said when this matter was up on the 18th of May, when the motion was made for the commitment:

I put it to the conscience and honor of Senators, have they any idea of extending the powers of this committee to sit during the vacation and keep these men in prison until next December? I do not believe a majority of the Senate have any such idea at all. I believe that the whole thing will turn out simply thus: If these men are imprisoned, the prison doors will be opened when this session ends if they should still remain contumacious; and then I do say that neither the dignity of the Senate nor the Constitution of the country nor the laws of the land will have been vindicated in the slightest degree; but, on the contrary, the whole thing will have been almost a ridiculous farce.

That is the way the thing seems to me. I may be wholly mistaken about this matter, but that is the way it seems to me; and therefore, seeing no good that is to come of this, while I want the man who gave this treaty to the press to be found out, while I would be glad that he should be found out, but seeing no prospect of finding him out by that course which you propose, I shall vote for the substitute of the Senator from New York, although that, I must confess, is not logically correct.

Now, Mr. President, has it not turned out just that way? Does not every man know that these men are to be discharged? Does not every man know from the vote taken yesterday that with this day their commitment ends? On one ground or another Senators who voted to commit them are getting out of the scrape, if I may use such a term in regard to it. Some have extraordinary doubts as to our power to prolong their commitment after the end of the session, and that is a convenient hole to crawl out of; but out of one hole or another hole the majority that committed them has dwindled down until yesterday there were, I believe, but eleven votes, if my memory is correct, for the extreme rigor of the law.

Now, is it not clear, as I said on the 18th of this month it would be, that at the end of the session you would discharge these men without having got any answer to your questions, and then the dignity of the Senate would not be preserved, the majesty of the law would not be vindicated, but the whole thing would be a ridiculous farce. It was to save the Senate from committing this ridiculous farce, it was to save the Senate from this exhibition of impotency, that I was for taking what I thought was the dignified course, turning these men over to the courts of justice to be prosecuted under the law of the land; and I think now many a Senator who voted then to imprison them feels in his heart that I was right, and that the majesty of the law and the dignity of the Senate would have been far better vindicated by that course than by this miserable *fiasco* of entertaining these gentlemen

for ten days or so and then opening their doors and telling them to go free.

Mr. WILSON. Now I hope we shall have the vote.

Mr. DAVIS, of Kentucky. Mr. President, I desire to say a few words on this subject, and first I will speak in relation to Mr. Tinker and what he said transpired in the committee. Mr. Tinker is a sensible gentleman. He deported himself with great propriety and great decorum before the committee, and impressed the committee very strongly with a feeling of personal respect and kindness toward him. That was evidently my own feeling. I propounded but a single question to Mr. Tinker myself, and that one of no particular importance. After the examination was through we had some facetious conversation with Mr. Tinker, something in the way of badinage, and the substance of what is reported by that letter-writer occurred as badinage between Mr. Tinker and myself, with some additions. He said that he was acting not according to his own judgment or will, but by the positive instructions of his employer, and that he had received a letter from Mr. Orton giving him specific and stringent instructions as to the course he was to take in making answer to the questions propounded to him, and he read us Mr. Orton's communication by telegraph. I immediately said, "Mr. Tinker, Mr. Orton is the really responsible man, and not you, and if you are to be treated as the other witnesses, and are to be subject to confinement and restraint of your liberty and ultimately to prosecution in court and to fine and imprisonment, you ought to bring Mr. Orton here, and he ought to suffer in your stead in those respects." That was the substance of what I said. All that was said pleasantly and facetiously in the way of badinage.

Mr. President, the question whether this treaty got improperly before the public or not is not the question now before the Senate. The question before the Senate, as was said by the honorable Senator from Nevada [Mr. STEWART] last evening, rises infinitely in importance above that. I care nothing about this treaty; I care nothing about its having been prolonged to the public before the Senate acted upon it; I care very little about the manner in which it got before the public; but the great question is, whether, when the Senate order a proper investigation, raise a committee for that purpose, authorize that committee to call witnesses before it, to swear them and take their evidence, a witness thus before the committee shall be allowed to take the ground, "You put a question to me; the Senate say it is a proper one, pertinent to the inquiry, but I am bound by my professional honor not to answer it," and to decide for himself and the Senate whether he will answer it or not, and stop all investigation. I say that the Senate can not allow that position to be held good without sinking to the lowest depths of humiliation, and without receiving, and deserving, the scorn of the country.

I maintain that that is the great question and the only question now before the Senate. Has the Senate the power to organize a committee for such an inquiry as this committee was organized for and which it was engaged in investigating? No Senator has denied that position. On the contrary, the committee was raised by the unanimous vote of the Senate. The resolution charging them with these powers and duties received the unanimous support of the Senate. The committee made a report that two witnesses had been called before it and had refused to answer a plain, pertinent, proper question in the course of the investigation with which it was charged, and every Senator has said and admits that that question was a proper and pertinent question and was

properly propounded to those witnesses. In that stage of the business shall the Senate discharge the witnesses and let them go hence, and let the investigation, unsuccessfully, ignominiously, and disgracefully to the Senate terminate, for that will be the upshot? There may be men here who are willing to place the Senate in that predicament, but I am not one of them. With my experience as to the duties and efficiency of the action of a committee, as enlightened by the case, I would advise the next committee of investigation to propound this single first question, after it had been ascertained that the witness had transmitted the telegraphic report of a treaty: "From whom did you obtain that treaty?" I would insist that no other question should be asked from such a contumacious witness; that that question and his refusal to answer should be reported to the Senate, and that the Senate should be placed then and there upon its responsibility to act upon that state of the case.

Suppose no other question had been propounded to these witnesses, and up to that point of proceeding the action of the committee had been reported to the Senate; is there a Senator here who would have voted, much less have moved, to discharge the contumacious witnesses? For myself I would say that if I had been capable of pursuing that conduct, thus negating, denying, or being willing to abandon the power of the Senate to institute such an inquiry and to prosecute it by the only mode by which it can be successfully prosecuted, in my judgment I should be unworthy of a seat in this body. The question before us involves the permanent power of this body to investigate such matters, and to prosecute the inquiry by the only mode known to courts and deliberative assemblies, and every authority charged with such investigations, and the only possible mode by which they can be practically and successfully prosecuted; and if the Senate now chooses to abandon that mode, I say it does sink into degradation, and it ought to receive the contempt of the world.

I regard the injunction of secrecy in relation to this treaty very much as the Senator from Massachusetts [Mr. Sumner] does. I believe there is too much secrecy in our Government, and especially in the action of the Senate and of other governmental officials. I would be willing to remove it to a great extent; but that is not the question. The single, isolated question before the Senate is, will it assert such power to compel a contumacious witness to answer a direct and pertinent question as belongs to every court and every tribunal having the right to institute an investigation of the kind? Why, sir, if these witnesses had been before a justice of the peace in Kentucky they would have been ordered to close jail so soon as they refused and persisted in their refusal to answer those questions. The honorable Senator from Massachusetts gets up and makes a howl about imprisonment and enlarging the captives. Who makes them captives but themselves? It is by their own will, by their own conduct, or rather by their own misconduct. They could at any time have enlarged themselves from this imprisonment if it be so disgraceful and so objectionable to their proud nature. All they have to do is to answer explicitly a question which every Senator says was properly put to them, according to the best of their knowledge.

I admit that I have doubts, serious doubts, as to the power of the Senate to continue their imprisonment after the session terminates. I want those doubts cleared up; and for the purpose of having it done authoritatively and by a sufficiently enlightened and dignified tribunal, I am willing to hold the two men who are now in imprisonment, if you choose to call it so, until after the session closes. They have their

remedy. They can move a judge in the District, the highest judge or any other judge that has power to issue a writ of *habeas corpus*, to have their persons brought before him that he may inquire into and ascertain the validity and the sufficiency of the cause for which they are imprisoned. If the Senate is transcending its power the judge will so decide, and he will direct these prisoners to be set free.

Mr. President, if the Senate in a pusillanimous, ignominious, and dishonorable manner abandons its committee, after the manner in which that committee has been defied by the correspondents of the press, after the manner in which this document has been surreptitiously sought for by an offer of bribery, by a proposition of corruption by the New York Tribune, to have it disclosed against the law of the land, after all these injuries and this insulting course and defiance, not only of the committee, but of the authority of the Senate, by these contumacious letter-writers, and after the infamy of their conduct day after day in fabricating facts and denouncing the vilest calumnies and slanders against honest men, not only of the committee, but of the entire Senate; I say that after such conduct as this it would be in the extremest degree injurious and insulting to the committee and dishonorable and degrading to the character of the Senate to order the discharge of these men.

I therefore ask leave to withdraw the amendment which I offered to the resolution of the honorable Senator from Massachusetts [Mr. Wilson], and I hope that the Senate will vote it down.

I have no quarrel with any of these men. I have no wrongs of my own to redress. If they have wronged me I do not know it, and I do not care for it if they have. I have no vengeance to wreak upon them. All I want is a just and proper rule in relation to divulging the secret proceedings of the Senate, and especially I want the dignity and power of the Senate maintained, its authority to prosecute these inquiries in the form in which this investigation has been going on, and I want it to have power to punish contumacious witnesses.

These men suffer self-martyrdom, if there is any martyrdom about it. They themselves unlocked the door of the dungeon for their own entry and confinement, if they were to be so confined. They did so by refusing to answer a just, legal, proper question, which every authority that has cognizance over the subject in the United States would compel them to answer. If they are immured they can bring that confinement to a close whenever they choose to answer the question. If they should be confined without authority of law, if the Senate should refuse to pass the resolution of the Senator from Massachusetts, they would then employ counsel; they would move for a writ of *habeas corpus*, and the courts, the most legitimate and competent tribunal in our Government to try such questions, would decide whether or not the Senate had power to continue their confinement after the session closed. If it had not the power the court would direct the prisoners to be enlarged and set at liberty. If the court should believe that the Senate had that power it would order these prisoners back to their confinement, there to remain until, according to their notion of their rights and their dignity and their honor, they gave explicit answers to the plain, pertinent, legal, and indispensable questions of the committee to arrive at a correct and satisfactory investigation of the subject.

* * * * *

MAY 27, 1871.

[Congressional Globe, p. 914.]

RELEASE OF RECUSANT WITNESSES.

Mr. WILSON. I move that the Senate proceed to the consideration of the resolution discharging the persons held in custody.

The PRESIDENT *pro tempore*. That business will come up as the unfinished business without any motion after the morning business shall have been disposed of. Petitions and memorials are in order. If there be no petitions, reports of committees are in order. If there be no reports, resolutions will be in order. If there be no resolutions to be offered, the unfinished business of yesterday comes up, being the resolution indicated by the Senator from Massachusetts [Mr. Wilson], and the question is on the amendment proposed by the Senator from Nevada [Mr. Nye].

The Chief Clerk read the amendment, which was to add to the resolution the following proviso:

Provided, That this resolution shall not be held or construed to interfere with any legal proceedings which may be instituted against the said White and Ramsdell upon the certificate issued by the Vice-President under the third section of the act of January 24, 1857.

The yeas and nays were ordered.

Mr. CASSERLY. I should like to hear the whole resolution read, and then the resolution as it will stand if amended as proposed.

The Chief Clerk read the resolution submitted by Mr. Wilson on the 22d instant, as follows:

Resolved, That the Sergeant-at-Arms of the Senate be, and he is hereby, directed to discharge Z. L. White and H. J. Ramsdell, now held in custody by him by an order of the Senate, immediately upon the final adjournment of the present special session of the Senate.

The resolution as it would stand if the proposed amendment were agreed to was read.

Mr. THURMAN. Is the question on the amendment offered by the Senator from Nevada [Mr. Nye]?

The PRESIDENT *pro tempore*. It is the amendment originally offered by the Senator from Kentucky [Mr. Davis,] but withdrawn by him and offered again by the Senator from Nevada.

Mr. THURMAN. I understand that.

Mr. SHERMAN. As I am afraid that a vote, if taken now, may disclose the want of a quorum, I do not desire to have the yeas and nays called at this moment. I shall therefore occupy a few minutes of the time of the Senate until Senators gather in, although I would willingly forego speaking, and will at any moment yield the floor whenever there is a sufficient number of Senators present to decide this question.

A doubt was expressed yesterday by my friend from Vermont [Mr. Edmunds] as to the purpose of Congress in passing the act of 1857 which has been so often quoted. I was then a member of the House of Representatives. The subject-matter that gave rise to the passage of that law caused much public attention and a great deal of feeling. It grew out of a publication making charges of corruption against certain members of Congress. Those charges were published by Mr. Simonton in the New York Times, and a committee was organized, of which Mr. Orr was chairman, Gen. Banks being at that time Speaker of the House of Representatives. Mr. Orr and a very strong committee undertook

to conduct the examination into the alleged corruption of members of Congress.

Mr. Simonton was called before that committee and shielded himself on the same plea that the persons now in arrest shield themselves, that is, an alleged professional honor, and he refused to answer proper and pertinent questions. On the 21st of January, 1857, the committee reported, through Mr. Orr, first, a resolution setting out the general facts in regard to Mr. Simonton, giving the testimony of Mr. Simonton and the fact of his refusal to testify on certain points, and the reasons for his refusal, and a resolution somewhat similar to the one adopted in this case, holding Mr. Simonton in custody; and also reported the bill which has been so often read in this debate.

I find upon examining this report and the debate that occurred in the House of Representatives that the only reason given for the passage of the law referred to was that the House of Representatives could not hold Mr. Simonton in custody after its adjournment. There was no other reason alleged. If the House of Representatives had the power to commit for contempt for a term of months, or for an indefinite time, if they had the ordinary power of a court of justice to punish a witness for contempt, there would have been no occasion to pass such a law. But, as I will show you by the extracts I will read, the only reason given for the passage of the act was that the power of the Senate and of the House was inadequate to punish the offense of a refusal of a witness to testify before a committee of Congress, and therefore it was necessary to declare and make it a criminal offense, punishable in the ordinary way before the courts.

Mr. CONKLING. Before what committee was that investigation?

Mr. SHERMAN. A select committee of the House of Representatives, of which Mr. Orr was chairman. Mr. Orr having asked leave to make his report, which was unanimously granted, he read the testimony of Mr. Simonton at length. Then Mr. Orr proceeded:

The committee consider it unnecessary to enter into an elaborate argument to establish the power of the House in this case. The summons issued under the hand of the Speaker, and was tested by the Clerk of the House, and the contumacy of the witness is a contempt of that authority. If there is doubt whether this authorizes the arrest of the party in contempt, and his confinement until the contempt is purged, besides the right to inflict other punishment afterward, it seems to your committee that none will question the authority of the House when they recur to the statute book. By an act passed May 3, 1798 (1 U. S. Statutes, 554,) authority is given to the President of the Senate, the Speaker of the House of Representatives, a chairman of the Committee of the Whole, or a chairman of a select committee of either House, to administer oaths to witnesses in any case under their examination, and willful, absolute, and false swearing before either is declared perjury, and is punishable as such. Here is express authority to swear witnesses, and false swearing is punishable as perjury. Is it, then, no contempt of the authority of this House (and the committee are acting as and for the House in this investigation) for a witness to refuse to testify to material facts within his knowledge?

The committee concur unanimously in the opinion that the House is clothed with ample power to order the party into custody, there to remain until released by the same authority, or upon the expiration of the present Congress. The committee recommend the adoption of the following resolution.—*Congressional Globe*, third session Thirty-fourth Congress, pp. 403, 404.

Mr. CONKLING. What is the language, "expiration of Congress?"

Mr. SHERMAN. The resolution was adopted, and Mr. Orr thereupon reported from the select committee of investigation "a bill more effectually to enforce the attendance of witnesses on the summons of either House of Congress and to compel them to discover testimony."

Mr. SCOTT. Was that at the first or subsequent session of a Congress?

Mr. SHERMAN. At the last session of the Thirty-fourth Congress. This was in January, 1857, and as a matter of course, the Congress expired on the following 4th of March.

I will now go further to show the reasons for passing the law. The resolution ordering Mr. Simonton in custody was then passed:

Mr. Orr then reported, by unanimous consent, from the select committee of investigation, "a bill more effectually to enforce the attendance of witnesses on the summons of either House of Congress and to compel them to discover testimony."

After some debate occurred Mr. Orr resumed the floor:

In reply to the suggestion of the Chair, I have to say that the committee may not be able to proceed in their investigation so as to report the facts to the House, unless such a bill is passed to give us authority to bring witnesses before us, and to inflict a greater punishment than the committee believe the House possesses the power to inflict.

* * * * *

The power of the House, I believe it is conceded by all, in reference to the punishment which it can impose for a breach of its privileges or for contempt, terminates with the adjournment of Congress. It terminates upon the 4th of March; and the committee are satisfied that if the House exercise all the power which the majority on this floor claim that it can exercise, that will be insufficient to extort testimony from unwilling witnesses.—*Ibid.*, page 405.

Mr. EDMUNDS. May I ask my friend a question right there, whether the 4th of March referred to by that chairman of the committee was the end of the Congress?

Mr. SHERMAN. I said that distinctly.

That is the position in which we are placed; that is the reason for the necessity of this special report from the select committee.

Now I will read another paragraph, so as to present the exact precedent furnished by this case of Simonton. After some collateral debate by others, Mr. Orr resumed the floor again and said:

The House considers that the excuse which he tenders for his contumacy is insufficient, and the House orders him into the custody of the Sergeant-at-Arms. Until when? Your power to punish for any contempt committed against the authority of the body of which you are members expires unquestionably when the commission of the members constituting that body expires. Of that there can be no doubt. A question might be raised on that point in the Senate of the United States, where a majority of the Senators hold over four years from the particular time when a matter of this sort should transpire. But in this House, where the commissions expire, there is no doubt on that question. I believe that no one has ever held that the House has authority to go beyond the limitation of the term for which the members are elected in punishing witnesses for contempt of the authority of the House. Is that punishment adequate? What would be the term of the imprisonment?—*Ibid.*, pages 405, 406.

And so he proceeds. I know that the Senator from Vermont [Mr. Edmunds] with his natural acuteness will endeavor to draw a distinction between the termination of the Congress and the adjournment of the House; but by reference to the precedents in the British Parliament, from whence we derive all our parliamentary law, it is found that the prorogation of the House of Commons, the adjournment of the House of Commons, or anything that brings an end for the time being to that session, has been held always to be an end of the power of the House of Commons over recusant witnesses. This limitation of the power is inherent, in the nature of things, in every deliberative body. It limits our power as it limits the power of every constituted authority. It limits our power over the person and custody of a witness, or of a citizen, to our actual sessions. This is the general basis of authority, and we are bound to respect it like any other court or tribunal. There

is no tribunal so high in this land, from the Supreme Court of the United States down to the humblest justice, but has certain limitations of its powers, and this old limitation of the power of the House of Representatives and of the Senate over the liberty of a citizen is the one that is proclaimed by parliamentary law, and that is the session of the House.

Mr. Orr here alludes to a distinction that has been claimed, although I believe never by an authoritative decision, between the Senate and House of Representatives in this regard. I do not know the theory for such a distinction. There is such a distinction in England. The House of Peers have always claimed that they had the power to punish for contempt, but the House of Peers possesses a very different organization from ours. The House of Peers is a court, not only a law court, but a chancery court; it is the highest court of appeals in all cases; it is the court of last resort, it is a court of general and perpetual jurisdiction. Now, the Senate of the United States is a court only for the trial of impeachments. It is only a court when sworn specifically to try a given case in impeachment. When we resolve ourselves into a court, we no doubt may punish a witness for contempt, like any other court or tribunal. The very moment we adjourn as a court of impeachment, we stand then in the position of any other legislative body, having precisely the authority of a legislative body, no more and no less. Therefore it is that when we adjourn, separate, and go to our homes, the power of the Senate, in my judgment ceases; and I believe that will be the decision of the judicial tribunals.

Mr. SCOTT. I should like to ask the Senator from Ohio for information, for he has evidently looked into this question, whether the House of Lords has claimed the power to punish for contempt only as against those parties who have been before it in the character of appellants, before it in its character as a court, or whether it has claimed it as against any persons it may see proper to examine before it in its proceedings?

Mr. SHERMAN. I am not prepared to answer that. I have not looked into it so thoroughly as that; but I will refer to Cushing's Manual, in which he says:

According to the parliamentary law of England, there is a difference between the Lords and Commons in this respect, the former being authorized, and the latter not, to imprison for a period beyond the session.

But I beg leave to remind the Senator from Pennsylvania that the House of Commons have by resolution denied the power of the House of Peers to hold any one in custody. I have not examined into the authorities lately, and I only speak——

Mr. EDMUNDS. Have you that resolution?

Mr. SHERMAN. No, sir; I have not. You will find it, I think, laid down in the English parliamentary law. That has always been one of the contested points, like the power to originate a money bill.

But, sir, there is no distinction in our Government between the power of the Senate in this regard and the power of the House of Representatives. There is no reason for such a distinction. If the distinction exists in England there is a reason for it. It seems that that distinction has been drawn; but in England the House of Peers is a sworn tribunal, always in existence to try ordinary causes, and the most important causes that can be tried in England are taken to the House of Peers upon appeal, where they are practically decided by the law lords, the ex-lord chancellors, and others whose high dignity and whose learning have carried them through all the tribunals, lords

chancellors, lords chief justices, and the exchequer court, into the house of Peers.

But here we have no such position. We have no prerogative. We have the ordinary power incident to a legislative body to enforce our orders, to compel witnesses to answer questions. If there is a doubt about this, I ask the Senate of the United States whether they ought to exercise a doubtful power? Is it not better to turn these men over to the tribunals we have ourselves provided?

That Congress in 1857 did not regard any distinction as existing between the two Houses is shown by the very terms of the act, because the punishment is as well for a refusal to testify to a committee of the Senate as it is for a refusal to testify to a committee of the House. The Senate and the House of Representatives have the same power, and no distinction has been made so far as I know in our legislative experience. Both have the same power, and when a witness refuses to testify all we can do is to retain him in our custody in contempt of our authority until our adjournment, and then we are bound by the law to turn him over to the tribunals fixed by the law for the punishment of such offenses. It is no degradation of the Senate.

My honorable friend from Wisconsin, [Mr. Carpenter] with a good deal of feeling, yesterday seemed to think that the Senate had not treated this committee fairly. Now, sir, I am willing to assume my full share of the responsibility of organizing this committee. My friend from New York [Mr. Conkling] says I first suggested it. I think I did; and I am perfectly willing to take my full share of the responsibility. But, sir, when it reasonably appeared, as it did from the testimony of these two witnesses, that this treaty did not get out by any fault of a Senator, or apparently by any neglect of a Senator, I thought as a matter of prudence and discretion it was better for us to abandon the imprisonment of these gentlemen and turn them over to the law, which they had clearly and plainly violated.

I did not wish to evade the responsibility. I happened to be absent during the two days when the subsequent discussions took place, but I am perfectly willing to share the responsibility. I do not think this committee have any right to feel so, because on the reports of committees constantly the body dissents from the committee. Why, sir, there is not a committee of this body that has not been overruled by the Senate sometimes. It is so with the Committee on Foreign Relations, on the Judiciary, on Finance, and all the other multitudinous committees organized by this body. The Senate has often dissented from the conclusions of its committees. Naturally in an investigation of this kind more or less feeling would arise; and it is perfectly proper that the body itself, responsible for the action of the committee, should supervise its action at all stages and do what seems to it to be meet and proper.

Now, there is an attempt made by the newspapers—I notice it in the morning papers—to divert this proceeding into an accusation against particular Senators. Two of the papers here very falsely state rumors which seem to reflect on Senators. We all know that there is no foundation for them, and I read them merely to show how far injustice might be done unwittingly by these editors and by other persons. The Republican, published in this city, this morning, speaking of our executive session yesterday, says:

The executive session yesterday was devoted to the consideration of very important matters, the nature of which has not transpired, but it was rumored last night that the deliberations affected a member of the Senate in regard to the publication of the treaty.

It could not be expected that the members of that honorable body, imitating the example of the contumacious newspaper correspondents, would divulge any secrets criminating or reflecting upon one of their own number.

A thousand readers would read that and suppose that we were sitting here in secret session about a matter affecting a member of our own body on an accusation that he had disclosed the treaty. We all know that to be utterly false. Here is another paper of this city, the Patriot, which says:

But there was another rumor also that the matter under consideration was a question of the very highest privilege, involving a certain Western Senator and his connections with the premature publication of the treaty of Washington.

I saw the other day and read in the newspapers paragraphs pointing to particular persons; one I remember that pointed to my honorable friend from Indiana before me [Mr. Morton]; perhaps two or three paragraphs fell under my eye and were cast aside. The testimony reported to us exculpates every Senator, and, as I recollect the testimony as it was read, for I have not had time to examine it, it shows that the paper furnished to the Senator from Indiana could not have been the one from which the publication in the New York Tribune was made. The testimony not only fails to criminate him in the slightest degree or connect him with this matter, but absolutely excludes the possibility of such a connection.

Now, Mr. President, I ask whether it is worth while to pursue this matter further? Without finding any fault with the committee, without criticising their conduct, because I think they have done simply what they had a right to do, and I think the comments of the newspapers upon the members of that committee and the members of the Senate growing out of this matter have been wrong and unjust, the question comes up whether we ought to exercise a doubtful power, to say the least, in holding these men in custody when we are ourselves about to go home; especially when a law has been passed which turns them over to the courts, the common tribunals which must judge all of us, and where their guilt upon the facts here stated seems to be apparent, and will be proved conclusively.

I hope we shall have this matter settled and disposed of. I have no feeling and have had none in this whole proceeding. I say now that there is nothing here which affects the conduct of any Senator on this floor, and so far as regards those who have been mentioned, there is testimony that entirely precludes the possibility of their having committed wrong. There is no testimony, so far as I know, that fixes any fault upon any officer of the Senate. This publication was made out of one hundred and seven copies that were printed, and it is strange that more than one was not stolen or bought or obtained in some way and published. It seems to me that the Department of State, which took the power and authority, as it had the right to do, to publish one hundred and seven copies of this treaty and kept all of them secret except one, has done what we never could do in this Senate and never have done.

Mr. HOWE. Let me suggest to my friend that if he succeeds in his efforts here, the next time such a publication is made there will be as many copies disposed of as the market will take, he can rest assured of that.

Mr. SHERMAN. I do not think any great harm will result to the people of the United States if treaties are published whenever they are made; and here I feel very different in regard to this examination than I would if these men were charged with corruption or with anything that

struck at the organism of the Senate. These men did nothing but what they had a right to do. They publish news; they obtain that news often surreptitiously. If they stole it, they were guilty of larceny; if they bribed one of the officers of this body or a Senator to give it to them, they were guilty of gross corruption and bribery, and the Senator or officer ought to be punished severely. But I know no law that prevents these newspaper men going around wherever they can, if they can do it without violating any specific act, and getting such information as they may and publishing it. Often they do great harm by doing so, but still there is no violation of a criminal statute and no violation of a moral obligation. Therefore the case that is now before us is one very different from what it would be if the question involved was a question of corruption, as in Simonton's case, which struck at the very foundation of the Government.

Mr. CONKLING. Mr. President, it is not my purpose to be drawn by the remarks of the Senator from Ohio, nor by any other incident in store for us, into a discussion of all the questions presented here, nor even into any consideration of the merits of this individual case. On a former occasion I assigned to the Senate my reasons for preferring to abstain from active participation in deciding the particular question or advancing the particular views applicable to the rights of the two witnesses now in nominal custody. And yet I am not willing to listen without dissent to the doctrines propounded by my friend from Ohio. Morals have a maxim, law has it in a general sense, that silence gives consent; and I remember on a noted occasion, on an occasion of which this Chamber was the theater, an occasion which will long be historic, days were occupied in arguments, the essence of which was that members of this body, particularly one Senator, had stated various views and dogmas touching the law and the rest of us sitting here had not risen to express our dissent, and therefore that we were concluded upon a great constitutional question, for such it was, by the views thus uttered in our hearing and received in silence.

I should be sorry when some case arises of vastly more importance than this to find myself concluded, or to be compelled to listen to an argument to prove that I was concluded, by the theories advanced now by the honorable Senator from Ohio. His address to the Senate contemplates consequences far beyond the particular incidents here or the disposition to be made of the two witnesses now standing in contempt. He levels his arguments at the prerogatives and powers of the Senate, and he conjures us to agree with him that this body, in a case no matter how flagrant, in the instance of a breach of privilege no matter how gross, must sit down submissive; if not content, with the idea that any witness who chooses may defy us, and that our power to compel him to answer ceases the moment we do not remain here, as a body in session, to watch him or to accept his answer should he choose to purge himself of his contempt.

I suggest to Senators that such a position has a significance wider, deeper, higher than any question concerning the witnesses White and Ramsdell. In order to test its importance I have a right to suppose an extreme case of the violation of law and of privilege. I have a right to suppose a case in which a member of this body shall become the object of an accusation destructive in the most serious sense to him, covering him with imputation, and beclouding the reputation of the whole body of which he is a member. I have a right to suppose the case of a witness who, knowing a fact which would dissipate in a moment this cloud, defiantly refuses to disclose that fact, and tauntingly inquires of

the Senate what it proposes to do about it. In such a case, were that case present to-day, the honorable Senator from Ohio argues that to-night, with the going down of the sun, if at that hour your gavel should fall, all power residing in the Senate to insist upon an answer would cease.

How, Mr. President, does the honorable Senator undertake to prove this? He goes very properly to Great Britain, the great source of principles of law familiar to us in many fields. He reads to us that the House of Commons has held that where an inquiry was pending before a committee and the house itself died, ceased completely to exist, became *functus officio*, annihilated, no power was left to restrain the liberty of a man for a contempt committed against the house before the house died. As my friend from Wisconsin [Mr. Howe] helps me to say in better phrase than might have come to me, how could there be a standing and continuous contempt of a body which body had itself ceased to be? Need the Senator cross an ocean or look back in history to find precedents to support a proposition so plain as this?

What else does he say about Great Britain? That the House of Lords is a body of duplex jurisdiction; it has judicial powers and it has parliamentary or legislative powers. My honorable friend from Pennsylvania [Mr. Scott], whose powers of analysis we have reason so often to observe, by a single question determined the value of this fact. He asked the honorable Senator from Ohio if he meant to say that the British House of Lords had asserted and preserved in its fullness the power to detain for contempt only touching witnesses before it in the character of a judicial tribunal, and had not done the like also where it sat as a parliamentary body, and the honorable Senator very frankly said that he could not say that the Lords had gone further in one character than in the other.

Then we have in the British House of Lords the case of a body like this, continuous, but not in perpetual session, let me remind the Senate. It is said that in the House of Lords three make a quorum; but we know that the House of Lords is not in perpetual session. If you please, it is like the court of chancery, it may be open anywhere at any time, but it is not in session until it is opened and its session actually occurs.

Did anybody ever argue that the House of Lords, in case of a witness standing in contempt toward it as a parliamentary body, could not restrain him till he purged himself of his contempt, except so long as the Lords in session and quorum remained incessantly present to ascertain whether he was ready to purge himself or not? If the honorable Senator will produce such a precedent it will have some force now, but I undertake to say that the precedents are the other way.

Will the honorable Senator produce a precedent like this? Will he show me a case where the House of Commons raised a committee, not a commission—I ask him to observe the distinction—a committee of its own members, clothing that committee with power absolute and full to remain in London during a vacation of Parliament, with all the functions it would have during the session, and then held that the House might not order a witness on pain of contempt to appear before that committee and testify? The English precedents present no such case, because their mode and practice are not applicable to it, and therefore, of course, the honorable Senator can not find in the House of Commons a precedent sufficiently on all-fours to maintain the position he states.

Going once more to Great Britain, let me ask a question. Does anybody suppose that a court, a common-law court, or any court, should a witness appear before it and refuse to answer, could not order that witness to stand committed for contempt until he files a paper with the clerk, or until some contingency occurs which the witness himself has the power to comply with? And how can it be said, as was asked the other day by the honorable Senator from Ohio farthest from me, [Mr. Thurman], in the case of a court, or in the case of any other continuing body, that the actual presence in session of the court, its jurisdiction all the time continuing, can affect one way or the other the question presented this morning by the Senator on my left?

Mr. President, before making an observation about the precedent in our own history, to which the Senator adverted, I wish to make a suggestion to the Senate; and I stop again to say that I am not arguing this particular case. I am arguing all the cases, be they more or less, which are to arise hereafter, because if the action proposed be taken, and taken for the reasons assigned by the Senator from Ohio, we shall find ourselves, when some more important instance arises, with this precedent made by ourselves staring us in the face.

In order to maintain the position he has assumed, the Senator must go further and prove that the Senate has not the power to raise a committee and clothe it in vacation with authority to exercise all the powers which a committee may exercise during the session of the Senate.

To transpose my proposition, the moment you admit that the Senate has the power to authorize my honorable friend from Pennsylvania [Mr. Scott] and his committee upon Southern outrages to sit during the recess, with all and every of the powers of a committee as those powers would be during the session of the Senate, that moment I maintain you give up the position which the honorable Senator from Ohio has advanced. Why? Because confessedly the committee in vacation may summon witnesses, may examine witnesses, may administer oaths, may send the Sergeant-at-Arms throughout the jurisdiction of the Republic to serve process and compel witnesses to come, and it lacks but one single function to applicable witnesses. What is that? The power to commit for contempt a witness who stands mute. Does a committee ever possess that power, even during the session of the Senate? No, sir; that is a power which resides alone in the Senate itself; and a committee in that respect in vacation is no more powerless than is a committee during the session of the Senate.

In this case the Senate has exercised the power of committing a witness for contempt. That has no relation to the power of the committee. It has ordered the witness to appear before the committee, where alone, in any event, he could appear and purge himself. It has ordered him thus to appear and purge himself; and what has the committee to do? Simply to receive his testimony, as confessedly it has a right to do. It follows that the moment you prove or admit that the committee has the powers pertaining to it, and may exercise them in vacation, you make an admission fatal to the position I dispute. We have the case of an exercise by the Senate of the power confessedly residing in it, and directing the witness to stand committed until he goes before the committee and delivers that testimony which, confessedly, the committee has a right to receive.

Mr. THURMAN. And it is the order of the Senate discharging him, too.

Mr. CONKLING. And, as the honorable Senator says, it is the order of the Senate that upon the happening of that contingency, to-wit, the

delivery by the witness of this testimony to the committee, which, confessedly, alone has the right to receive it, his imprisonment shall cease, and his enlargement shall instantly occur. Why, sir, in that regard, it is like the case of a court directing a witness to stand committed until he files a paper with the clerk which he has in his possession, or until he performs any other act of expurgation, for refusing to perform which he is in contempt.

Mr. SCOTT. As I do not expect to participate in this discussion, but feel interested in it for various reasons, some of which are apparent to the Senate, I wish to suggest to the Senator from New York that if it be true, as suggested, that a contempt can not continue against this body after its session has ceased, how can it be that a contempt can be committed against it when it is not in session?

Mr. CONKLING. That is a very cogent inquiry. We have instructive illustrations in our own history; one that occurs to me now; another was referred to, I think, by a Senator the other day; instances in which a committee of this body sitting in vacation summoning a witness and finding that he refused to answer, and reporting him here, have been met by the Senate with a readiness to affirm that it was a contempt liable to all the dangers of contempt. Why? Because the committee to which the Senate in vacation had delegated this power represented the Senate as fully as the committee would have done had its sessions occurred during the sessions of the Senate also. That is the only reason. I submit, therefore, that it is quite too late for us to argue that the Senate has not the power to raise a committee and continue the powers of that committee during the vacations of the Senate itself.

* * * * *

Mr. CONKLING. Mr. President, coming to the one precedent, as the Senator from Ohio [Mr. Sherman] called it which he cited, and to the reasoning by which it was supported at the time, I should say, had I been a spectator, without knowledge except derived at the moment of the side the Senator was supporting, that he was reading that precedent in favor of the law as I understand it, and not in favor of the law as he maintains it.

What were the facts there? The House of Representatives was in session. The time in question was the last session of the House. By the Constitution of the United States on the 4th of March that House was as dead as Julius Cæsar or Henry VIII. There was no escape from that. As certain as death was the death of that House with all its powers, be the same more or less, at a day and hour fixed by the Constitution of the United States.

Mr. THURMAN. And allow me to suggest there was no committee of that House continued to receive the answer.

Mr. CONKLING. I am coming to that in one moment.

Now, Mr. President, what said Mr. Orr? He referred the House to these ancient acts which I have in my hand, and which, although contrived with some dexterity by our fathers, although framed by men illustrious for their wisdom and their genius, were adapted only to the morailty which prevailed at that day. They were made strong and energetic enough only for the witnesses upon whom they were expected to operate. At the time of which we are speaking Mr. Orr and the House reached a day in its experience when these old modes were too weak, when the vigor with which they could be applied was not great enough to persuade witnesses to yield to the mandate of the law. Therefore, he came to the House and reported the inadequacy of exist-

ing provisions and asked of the House three additional provisions, one of which should compel men to attend upon penalty, which should make the arm of the law long enough and strong enough, if necessary, to drag before its tribunals men summoned as witnesses; a provision which, in the second place, should take from the witness every pretext for refusing after he should have appeared, by indemnifying the witness, if I may so say, against any harm to come to him from delivering such testimony as he might give; and then providing, in the third place (because it was only to the third provision that the Senator from Ohio called attention), that, in addition to all the penalties theretofore and then existing, over and beyond them a witness who did refuse to answer, either before a committee or the House, should be deemed guilty of a misdemeanor, of a violation specifically of the laws of his country, for which it should be the duty of the Presiding Officer to hand him over to the judicial tribunals there to be dealt with on the presentment of a grand jury.

Now, Mr. President, the Senate sees from a statement of these provisions that the want of power which the committee reported was not in a single respect only; that they thought the time had come when in all these three respects the law should be succored and invigorated. What did Mr. Orr say touching the necessity of this third provision at that time? Speaking in January, with but a succeeding month, and that the shortest month in the year, to intervene between the day on which he spoke and the death time of the Congress, he said: "It would be idle for us to rely in this case upon that measure of imprisonment which alone is within our power." And he stated most strongly, I submit to the Senator, the precise idea in his mind when he said, "How can a body detain a witness in custody after the expiration of the commission of every member of that body?" Sure enough, Mr. President, how could a judicial tribunal, a court, a parliamentary body, or any other entity in which human authority exists, assert that authority after its own lifetime had ceased and every function of its own was dead?

Among the particular results and impossibilities to which this proposition points us is that to which the Senator from Ohio [Mr. Thurman] adverted a moment ago. He truly says, after the 4th of March there could be no committee of the House; and I add to his statement, there could be no House of Representatives even to assemble and receive the answer of the witness or enable him to purge himself. Therefore we have in the proposition to detain a man after the 4th of March the coincidences of these two monstrous elements: First, a body attempting to exert a great prerogative right after all its powers and its life had ceased; and, second, a body attempting the exercise of such despotism as to imprison a man on the 4th of March, saying to him—and I borrow the poetic phrase which I once heard from my honorable friend from Massachusetts nearest to me [Mr. Wilson]—"The snowflakes of December shall fly before you shall be permitted, however contrite you may be, to find any tribunal in this broad Republic which will receive your expurgation and set you free."

Why, Mr. President, it needed no argument from Mr. Orr, it needed no suggestion to men tolerably informed of the genius of our Government, to prove that there could be no balder, no more monstrous usurpation than for a House of Representatives to undertake to imprison a man and then detain him in custody after the House itself had died, leaving succeeding that House no committee, no successor of any kind, for eight or nine months, which could assemble or appear and enable the witness to purge himself and submit to the law.

Nay, Mr. President, I remind the Senator from Ohio who made this suggestion that the argument goes farther than that, because legally there could never on earth be a tribunal after that to receive the man's answer, for the next House would be a new House, and all matters fall with the end of a Congress. The next House would have had no jurisdiction of the case of Simonton, in December following, when the House met; and thus to have held, in that instance, that they might imprison him after the 4th of March would have been to say that they might imprison him, if he had lived so long, until eternity grew gray and hobbled upon the crutches of time, though he might have been willing to come forward and purge himself. From a proposition so monstrous as that the House, of course, retreated. Has that anything to do with this question? If it has, I ask in all seriousness what it has to do with it?

Mr. President, when the Senator from Ohio shall find a precedent, when he shall find a well-considered opinion from any student of the philosophy of our Government, holding that the House of Representatives, should it adjourn over for the holidays, for two weeks, and leave a committee expressly authorized to sit during that fortnight and receive the testimony of a witness, must adjourn the witness in contempt over the holidays also or discharge him because Christmas has arrived, then he will find a case or an opinion entirely in point, and I will defer at least to the fact, if it exists, even if I can not defer to its reasoning.

Mr. THURMAN. As I do not intend to speak on this subject, I should like to suggest this question to the consideration of those who do propose to speak. Suppose that during the late civil war the Senate had reason to believe that a Senator was communicating the doings of the Senate in secret session to the enemy. There were secret sessions both of the Senate and of the House for legislative business during the civil war, as there have been during all wars. There were secret sessions during the war of 1812. The declaration of the war of 1812 was made in secret session. Suppose that during the civil war the Senate had good reason to believe that some member of this body was traitorously communicating to the enemy the secret resolves of the Senate, and a committee was appointed to investigate that, could it be that the attempt to find out that traitor in the very body itself would end with the end of the session?

Mr. CONKLING. A very cogent form of putting the question, it seems to me, and I am obliged to the Senator for suggesting it, for the reason, among others, that it is a contribution to the apology that I owe for detaining the Senate a moment on the question. We see from that illustration, and from many others which might be given, the strange predicament in which we should find ourselves if we were here to assert, for any purpose, either for detaining or discharging any particular witness, that we have no powers in this regard which do not cease the instant that a vacation of this body for a week, or a month, or half a year may occur.

Mr. President, I do not mean to pursue this line of thought. Perhaps I ought in frankness to confess that I have been making these observations without having looked at the precedents. I am speaking upon a memory some years old, for I have had no occasion for several years to refer to any of the precedents applicable to this matter, and I am speaking therefore rather upon general principles than upon specific authorities, and I make my remarks rather as suggestions.

Mr. SHERMAN. Before the Senator concludes, in order to give him an opportunity to reply to the cases which I cited, I will refer him to

English authorities, because I find they are much stronger than even I supposed.

Mr. CONKLING. I yield for that purpose.

Mr. SHERMAN. Unless there is a distinction between the Senate and House of Representatives the case is clear on the authorities. The whole matter is discussed with a fullness of precedent that my attention had not been called to before in May's Parliamentary Practice, where the cases are cited. Referring to volume 1, in regard to breaches of privileges of the House, Mr. May lays down the general principle that there is no difference between the two Houses in England, the House of Peers and the House of Commons, except when the House of Peers is acting as a judicial body. I will not read that because it is not so material to the immediate question. I will now read what he says is the practice of the House of Commons in regard to punishment:

The modern practice of the Commons is to commit persons to the custody of the sergeant-at-arms, to Newgate, or to the Tower, during the pleasure of the House, and to keep offenders there until they present petitions praying for their release, and expressing contrition for their offenses, or until, upon motion made in the House, it is resolved that they shall be discharged. It is then usual for the parties to be brought to the bar, and after a reprimand from the speaker, to be discharged on payment of their fees. But occasionally their attendance at the bar and the reprimand have been dispensed with.

It is not customary to order a person to be reprimanded unless he be in custody, though there are some examples of a different practice. When the offense has not been so grave as to cause the commitment of the offender, he is generally directed to be "admonished" only. What is said by Mr. Speaker in reprimanding or admonishing persons at the bar is always ordered to be entered in the journals.—*May's Parliamentary Practice*, pages 105, 106.

Here is the question of the power of imprisonment:

No period of imprisonment is named by the Commons, and the prisoners committed by them, if not sooner discharged by the House, are immediately released from their confinement on a prorogation, whether they have paid the fees or not.

That is an adjournment, not a dissolution. The Senator knows the difference between the prorogation of Parliament by the Crown and the dissolution of Parliament.

Mr. CONKLING. I do well know it; and I wish the Senator would state the distinction as he understands it.

Mr. SHERMAN. The ministry may at any time prorogue Parliament.

Mr. CONKLING. Undoubtedly; and what does the Senator understand the effect of that to be?

Mr. SHERMAN. To put it off six or seven months; in other words, the prorogation is an adjournment *sine die*.

Mr. SUMNER. The Senator is right; it is equivalent to an adjournment *sine die* with us.

Mr. SHERMAN. The ministry may at any time, if they desire time, prorogue Parliament, or if they desire to appeal to the people, the constituency, they dissolve Parliament. It is an adjournment *sine die* or the expiration of the term.

If they were held longer in custody there is little doubt but that they would be discharged by the courts upon a writ of *habeas corpus*. Lord Denman, in his judgment in the case of *Stockdale v. Hansard*, said:

"However flagrant the contempt, the House of Commons can only commit till the close of the existing session."

That is the point to which I wish to call the attention of the Senate:

"Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offense being committed the day before the prorogation, if the House ordered his imprisonment bu-

for a week, every court in Westminster Hall, and every judge in all the courts would be bound to discharge him by *habeas corpus*."

It was formerly the practice to make prisoners receive the judgment of the House kneeling at the bar, etc.—*May's Parliamentary Practice*, pages 106, 107.

Here is the decision rendered by the highest tribunal in England, and there are multitudes of other decisions and precedents on this point, covering some twenty or thirty pages. Here let me say, so that the Senator may reply to it, that while Mr. Orr was dealing only with the case he had in hand, that is, the approaching end of a Congress, yet in law there is no difference between what in England is called a prorogation and a dissolution. It is the session, the existence of the session, the presence of the body that gives to the House of Commons and to the House of Representatives and to the Senate the power to commit for contempt. It was to meet that difficulty, the very case put by Lord Denman of a gross contempt of the House a few days before its adjournment when there was not sufficient time to punish under the law—it was to meet that extreme case put by Lord Denman, that the House of Representatives in 1857, after a fair statement of the case, passed the law under which the witnesses are undoubtedly liable to be tried and convicted in the ordinary course of the criminal law.

Mr. CONKLING. Mr. President, in order to save the time of the Senate I should like to have the honorable Senator from Ohio answer this question: Are not the precedents he has been reading precedents of persons guilty of a breach of privilege, not witnesses refusing to testify?

Mr. SHERMAN. If my honorable friend will look he will find twenty pages of cases of witnesses who refused to testify before committees, of men who disclosed improperly the secrets of the body, and there are pages giving cases of a great variety of newspaper editors who surreptitiously got the proceedings of the House of Commons, or misreported them, or arraigned a member of Parliament. There are a number of cases.

Mr. CONKLING. I do not know but that that is so; but if my friend will hear me read from the pages he has handed me I do not think we can differ. I am going to read the cases, and then I am going to read the doctrine which was applied to those cases, and then we shall have the whole thing:

Acting as a court of record, the Commons formerly imposed fines and imprisoned offenders for a time certain.

In 1575 Smalley, a member's servant, who had fraudulently procured himself to be arrested, in order to be discharged of a debt and execution, was committed to the Tower for a month, and until he should pay to W. Hewett the sum of £100.

The Senate will see that that was the case of the servant of a member who had done a thing for which he was punished; nothing to do with testifying as a witness.

Again, in 1580, Mr. Arthur Hall, a member, who had offended the House by a libel, was ordered to be committed to the Tower and to remain in the said prison for six months, and so much longer as until himself should willingly make retraction of the said book to the satisfaction of the House.

Nothing to do, the Senator will see, with testifying before a committee of the House—acts of misconduct:

In 1586, Bland, a currier, was fined twenty pounds for having used contumacious expressions against the House of Commons.

I might follow down this list, and it is a list which is supplemented by the language which my honorable friend has read. I am reading on the very preceding page.

Mr. SHERMAN. I will show the Senator quite a number of cases precisely like ours.

Mr. CONKLING. Very likely; and I will return the book to the Senator in a moment; but I do not succeed in getting his attention to the point which I am now stating. I have turned back a single page from the doctrine which he read, and I am reading the cases immediately preceding that of which this doctrine is affirmed. Now, I have no doubt the Senator could turn back to other cases in reference to the testimony of witnesses, to which cases I will come in one moment; and I think there is a very full answer to it, at any rate there is an answer which I will beg to submit to the Senator presently; but first as to this point. After enumerating these cases, some of which I have read, follows the language which the Senator read from this book; and it follows without the statement of any intermediate case. It is of these cases that it is said:

The modern practice of the Commons is to commit persons to the custody of the sergeant-at-arms, to Newgate, or to the Tower, during the pleasure of the House.

This commentator has first stated, as I read, that the Commons formerly imposed fines and imprisoned offenders for a certain time. Now he says the modern practice is to commit persons during the pleasure of the House:

And to keep offenders there until they present petitions praying for their release, and expressing contrition for their offenses.

Does my honorable friend for one moment confound restraining a man for contempt with punishment for any offense whatever? Why, sir, we have not the shadow of a right to punish one of these men for one instant if we stay here; and nobody pretends that we have. They have committed no offense against us for which we have a right to punish them, and that is a part of the fog which has been thrown over this whole matter. No member of this body ever supposed that we had a right to punish them for one instant, although we were here ourselves when the punishment was inflicted. What we have done is not punishment. It is the assertion of the right to say to them, "You stand committed, not for an offense, not as punishment, but until you testify as a witness." This doctrine, says this commentator, was applied to cases of persons punished for offenses, and they were imprisoned until they presented a petition and expressed contrition for their offenses.

Now, my honorable friend, although he denies that this is a judicial tribunal, must admit that it is a tribunal composed of men some of whom have read law; and, coming down to the precise necessities of the case, if we want to convince each other we must admit that, whether we treat ourselves as Senators or as lawyers, we know the difference between committing a man for contempt and sentencing him to prison as punishment for a crime.

But now let me come to what will content the Senator better as a mode of meeting his argument. Let me admit for the purpose of the argument that these cases were the cases of witnesses, that this doctrine was held applicable to witnesses in contempt, and meeting the Senator upon that ground, let me ask him, in that event does this authority say anything except that when Parliament is prorogued, which we agree is a dissolution as by adjournment *sine die*, nothing more——

Mr. SHERMAN. To a time certain.

Mr. CONKLING. For my purpose, to a time certain or uncertain, which the Senator will see does not touch the point I make at all. It is an

adjournment of Parliament either *sine die* or to some limited but far future day. With that adjournment the committees fall; with that adjournment not only Parliament disappears, but the committees of Parliament; and therefore to hold that you would commit a man for contempt and yet say to him "If you are ready to-morrow to purge yourself, and if you are ready every day to purge yourself, you must still lie in jail until in the course of events the Parliament of Great Britain meets again," has been treated as an aggravated if not an unwarranted use of authority, and therefore they have refused to exercise authority to that extent. That is all.

Mr. THURMAN. Will the Senator allow me to interrupt him for a moment to make a suggestion? The case is greatly stronger; when Parliament is prorogued it can not assemble again of its own mere will; it must be called by the Queen.

Mr. SHERMAN. The prorogation always fixes the time of meeting.

Mr. CONKLING. The Senator from Ohio Mr. [Sherman] tried to hedge against that objection which I was going to make, by saying that a prorogation adjourned Parliament to a day certain; and therefore I am answering him, admitting his premises, taking the case as he understands it, though I do not understand it so; and then I say it is a complete answer, on his own premises, that when Parliament went away it carried with it every vestige of its authority, leaving behind it no *locum tenens*, no representative which could be clothed with the power to accept the expurgation which the law required. Does not that answer him?

But, Mr. President, I deny altogether the law which the honorable Senator has cited and the application of it which he has made. I say again that it is the case of offenders punished by Parliament, and not the case of witnesses held for contempt, to which it applies. It is exactly such a case as would occur if some person now should intrude himself from the outside of this Chamber and inflict a personal indignity or a personal injury upon the Senator from Indiana as he sits in his chair. There would be a case of punishment of this offender for the infraction of your privileges and the violation of your laws; but that I submit, has nothing legally to do with the question we are considering to-day.

The Senator from Ohio hands me the dictionary with the definition of the word "prorogation," which is, first, "the act of proroguing, continuance, prolongation, postponement, adjournment;" second, "in England the continuance or adjournment of Parliament from one session to another made by the royal authority." So that, had we royal authority here, and could we apply the dynamics of that case to ours, we should sit here liable at any moment, by the action of a hand above us, to be dissolved never to meet again until the pleasure of royalty should convene us, or until we had reached that day which royalty in advance had fixed. With any definition of "prorogation," or with any state of case which my honorable friend can find in the English precedents, I deny, first, their application to this; and, admitting their application, then I say they decide the principle of the law, and, I think, the law itself, against the Senator from Ohio, not with him.

Now, Mr. President, one or two other suggestions and I shall have done. I have been protesting against one of the reasons advanced for the proposed action. I wish to protest against another. Whatever may be the action of this body let us in reason and self respect place it upon some other foundation than the allegation that the Senate has been vindicated. That, I humbly admit, is too much for human cre-

dulity; and do not let us excite the derision of the country by admitting that we can find no ground better than that upon which to plant ourselves. "The Senate has been vindicated," we are told. I should like to know how. Here there met in the capital of our country a high commission, as it is called. It was composed of selected men, 10 in number. It required, no doubt, the assistance of other persons, clerks and others. It required—I have a right to refer to it because the testimony now lying on your tables reveals it—the employment of the press and of the types at the Government Printing Office for weeks and months. The press was used to make many copies and duplicates of article after article of the treaty, and finally to make more than one impression or print of the treaty itself. During all these weeks and months the Congressional Printer, with all his subordinates, the high commission with all its attendants, the State Department, the whole executive department of the Government, had the custody of or access to all these many, many prints; and not one of them ever found its way to the public, but faith and trust was kept inviolate by everybody, from the president of the commission to the janitor of one of the public buildings. On the 10th of May the Senate met, at 12 o'clock, and this document passed into its custody, and lo! but ten hours had elapsed before it was given to the winds.

I might stop here and rely upon the doctrine of probabilities to acquit the State Department, the high commissioners, and the Public Printer from any reasonable suspicion that they who had carefully and thoroughly observed their duty for weeks and months selected that narrow isthmus of time, hardly wider than a hair, between the convention of this Senate and the betrayal of the treaty, and within that little space proved recreant to a trust which had well been guarded so long.

Mr. THURMAN. Will the Senator allow me to ask him a question right there?

Mr. CONKLING. Yes, sir.

Mr. THURMAN. I find in the book of testimony, which has been for the first time this morning laid on our desk, that Mr. Adams testified that this treaty was offered to him on Monday night by a man named Marix, in regard to whom this is the testimony of Mr. Adams:

Question. Do you know the business of this man Marix?

Answer. I will not be positive about this, but I think he said he had been doing some translating at the State Department, or that his father had, I do not know which.

More testimony tends to show that the man did have a copy of the treaty.

Mr. CONKLING. Oh, no.

Mr. THURMAN. There is testimony that he stated particular articles of it. Now, I find in the list of employes of the State Department one Henry Marix, of the District of Columbia. What I wish to inquire, not having had time to look through this testimony yet, is whether that man Marix, who offered the treaty to Mr. Adams, or, if that was the son, whether the father or both were summoned before the committee and gave their testimony, and if not, why not?

Mr. CONKLING. I am not able to state whether they were summoned or not. I am able to state that they did not appear before the committee when I was present, and I think not at all, although I have not looked at the record to see. And in answer to the Senator's question "why not," I might say that the chairman of the committee during one day when the Senate was not in session, which would have been a convenient day, was too ill to leave his room, and I believe too ill to

leave his bed, and that day was lost, and when the Senator remembers the early hour at which the Senate met and its late sessions, he understands that there was very little time, and the witnesses to whom he refers are by no means the only witnesses who, if time were afforded, might, perhaps with great propriety, have been examined.

I wish, however, to say to the Senator, without desiring to go into the discussion of the facts of this case, which I do not mean to do, that this person Marix, referred to by the witness Mr. Adams, made no exhibition of a copy of the treaty, and, as the committee understood, and I think the evidence shows, he simply professed that he could obtain a copy of it. He was negotiating with that view. I have no right to say what any other member of the committee thinks about it, if I knew; but I can say for myself that the testimony did not impress me with the idea that this man had in fact a copy of the treaty or that he could obtain it. I do not think that the committee acted upon the idea that he was in possession of a copy of the treaty at that time, or had been at any time; but, as I say, I do not wish to discuss that.

Mr. SHERMAN. I should like to ask the Senator one question.

Mr. CONKLING. I will yield if the Senator does not take me into the facts of the case.

Mr. SHERMAN. I ask whether this particular treaty published in New York was not furnished as early as ten o'clock, and whether the treaty printed by our order was printed until after midnight?

Mr. CONKLING. I will state what I understand the facts to be in that regard. The treaty printed as the Senator says by us, printed at the same place and by the same men who had printed the previous revises, was struck off about five o'clock on Wednesday; I think that is the precise time; the testimony will show. The proof, I mean, was struck and sent to the State Department to be read, reaching the State Department between five and six o'clock, I think—I hope the Senator will not hold me to literal accuracy about this—and was read and returned to the Printing Office by six o'clock on Wednesday afternoon; and then the whole edition, one hundred and twenty-five copies, bound and attended with the accompanying papers, and stitched and cut, in pamphlet form, was sent here some time during the evening, and my impression is that eleven o'clock was stated as about the time when it was sent here. If I understand the Senator's question, that is as near as I am able, without referring to the testimony, to answer.

Mr. President, I saw going to say that the mere matter of time and circumstance is one to which the State Department and the Public Printer and the commission are entitled, as a *prima facie* case, at least, in their favor. In addition to that, without going into the facts, I know of nothing which has been testified, nothing which has been refused as testimony by witnesses, that could have the effect of exonerating the Senate. I was the other day—and the Senator from Wisconsin who is now absent called my attention to it yesterday—that the Senator from Indiana, for one, misunderstood the statement made by the chairman of the committee. He understood him to express his belief that this could be traced to a Senator. I did not so understand him, and hearing the Senator from Indiana make that remark I took the trouble to look at the Globe and found that the Senator from Wisconsin did not say that. What I understood him to express as his belief was that this had occurred through the Senate, and by "the Senate;" of course he comprehended not only the members of this body, but all those persons for whom this body is responsible. And so I comprehend all those when I speak of the exoneration of the Senate; and beg to say that

I have no reference to any individual member of the Senate or even to all the members of the Senate included, as distinct from the officers and employés of the body.

It has been said here, and to that the honorable Senator from Ohio refers as a justification of his remarks, that these witnesses, one or both of them, said, "I am willing to answer that I did not receive this from a Senator, nor from a secretary of a Senator, nor from any person whom I know to be an officer of the Senate." The answer I think was that, in substance. Now, upon this point, simply disclaiming, as I feel bound to disclaim in candor, the whole idea that we have succeeded in covering ourselves even with the thinnest lacquer of exoneration, I wish to ask two or three questions.

Does any one suppose that a member of the Senate, had there been one wishing to betray this treaty, would have taken it and delivered it to any person; and not only so, but delivered it to the very person who was to use it publicly, and who would certainly and first of all, as the event has shown, be resorted to for information as to where he got it? I feel bound to have so much respect for the members of this body as to suppose that they are blessed with common intelligence, that they comprehend as much at least as is embraced in the instinct of self preservation; and if they do, then I hold that it would be very disrespectful for anybody to argue that either of them would have taken this treaty and delivered it personally, not only to somebody else, but to the very man who was to publish it, and who was certain to be resorted to with a demand to know who gave it to him.

If a member of the Senate would not have delivered it personally, would he have sent a known representative of his to do it? Certainly he would not. I take it there is no young gentleman wishing on St. Valentine's day to send a valentine to a young lady who is so guileless and ignorant of the arts of this world that, if he did not want to be known in it, he would take somebody who was known, as a member of the family, and send him to the house to deliver it, or take it and deliver it himself. I take it there is no person who has ever indulged himself in contributions to the press, who has ever been in the habit of writing articles, however innocent they were, however creditable they were, in which he did not choose to appear, who carried them to the printer himself, if he did not want the printer to know that they came from him, or sent somebody who would represent him.

Why, Mr. President, if this was the idea, what would become of the great literary puzzles of history? Why would men be arguing whether Sir Philip Francis or somebody else wrote the Letters of Junius? Why would there be members of this body, for such I believe there are, who think that Lord Bacon, and not William Shakspeare, wrote the plays which are attributed to Shakspeare, if even in respect of mere literary matters there had been no better way to transmit manuscripts or documents from the responsible hand to the hand of the printer without having the printer know from whom they came? So, Mr. President, I assume that no one could have been so little versed in the laws of human nature and the modes of human action as to expect to call a newspaper reporter, whose paper had published this document, and learn from his lips that a member of this body, or any other person responsible to this body, had gone, self-revealed and self-exposed, and betrayed the document in question, when it was so easy, so simple, to do it in any one of many other ways.

Why, Mr. President, I need not stop to illustrate this. Other Senators have illustrated it. Let me take the familiar case of counterfeit

money. Every once in a while some unfortunate fellow-being is condemned as a felon for passing counterfeit money. Suppose A B is charged with passing a counterfeit bill, and the bill has found its way into the possession of one of the Senators sitting around me, and that Senator should come and say, "I am willing to state that I did not receive this bill from the culprit who is charged, but I will not tell you whom I did receive it from. If I received it from another Senator I will not tell you; and if he received it from the Sergeant-at-Arms, and if the Sergeant-at-Arms received it down in the restaurant, and if the counterfeiter passed it there, I will not allow you to find that out."

It is needless to argue this; and without argument the obvious facts in the case compel every member of this body, whether he favors an abandonment or a continuance of this investigation, to admit that the Senate is at least where the Senate was before the investigation was ordered. I do not say that it has tended in any way toward establishing the fact that this paper was betrayed through the Senate; I affirm and deny nothing on that point; but I say there is nothing in it which exculpates or exonerates the Senate in this regard. So much I think it is just and fair to say, from regard to all the other persons upon whom suspicion would rest if it were to be affirmed that the Senate in all its branches is acquitted and that this fault lies at some other door.

If, Mr. President, I were disposed, as I am not, to look into the facts in this case, I should find occasion to present stronger arguments than I have done to support the assertion that that body of men for whom the Senate is responsible have not been exonerated by this investigation. As I said in the beginning, I will not allow myself to be drawn into the facts of this particular case in its application to the witnesses who now stand in contempt of the Senate; and I have made the observations to which I have asked the attention of the Senate only because I felt bound, in the first place, to record my dissent from the general doctrines announced by the Senator from Ohio, and also because as one member of the Senate I feel bound in frankness to accept whatever responsibility or irksomeness there may be in the fact that up to this time the Senate has not been purged or vindicated by the investigation.

MR. SUMNER. Mr. President, this question is important, primarily, as it concerns the liberty of the citizen; but it is made important also by the attempt to which we have just listened to establish for the Senate a prerogative which on history and precedent does not belong to it.

Some days ago I took the ground which I shall take to-day, that on the close of the session of the Senate any imprisonment founded on its order must cease. Of that conclusion, whether on history or law, I have not the least doubt. I have listened to the argument of the Senator from New York and to his comment upon the authorities adduced. The answer to my mind is obvious. It will be found simply in stating one of those authorities and calling attention to its precise language. The Senator from Ohio has also presented to-day what I had the honor of quoting on the first day of this discussion, the authoritative words of May in his work on parliamentary law, and also the solemn judgment of Lord Denman, chief justice of England. May says, speaking of prisoners committed by order of the House of Commons:

That they are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody there is no doubt but that they would be discharged by the courts, upon a writ of *habeas corpus*.

This statement, coming as it does from the well-known chief clerk of the House of Commons, as familiar with the usages of that body as any living man, is of itself authority. But he adduces the weighty words of Lord Denman in the most remarkable case of privilege that has ever occurred in English history, being that of Stockdale and Hansard, which, it is well known, was discussed, day by day in Parliament, week by week in Westminster Hall. I have before me the opinions of all the judges on that case, but the words that are particularly pertinent now are quoted by May as follows:

However flagrant the contempt, the House of Commons can only commit till the close of the existing session—

Mark, sir, if you please, how positive he is in his language—

can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offense being committed the day before the prorogation, if the house ordered his imprisonment but for a week, every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by *habeas corpus*.

These were the words of the lord chief justice of England in a most memorable case as late as 1839. This is no ancient authority, but something modern and of our day. It is not expressed in vague or uncertain terms, but in language clear and positive. It is as applicable to the Senate of the United States as to the House of Commons. It is applicable to every legislative body sitting under a constitutional government.

An attempt has been made to claim for the Senate prerogatives which belong to the House of Lords. How so? Is the Senate a House of Lords? Is it a hereditary body? Is it a perpetual body in the sense that the House of Lords is a perpetual body? We know that the House of Lords is in session the whole year round. We know that, according to an early rule of the canon law, *tres faciunt collegium*, three make a quorum in the House of Lords. So that the presence of three peers at any time, duly summoned to the chamber, constitutes a sufficient quorum for business. Therefore the House of Lords has in it an essential element enabling it to come together easily and to continue in perpetual session. It is in its character, in the elements of its privileges, clearly distinguishable from the Senate as it is clearly distinguishable from the House of Commons. Such privileges as the Senate has are derived from the House of Commons rather than from the House of Lords, so far as they are derived from either of these bodies.

Another attempt has been made by criticising the word “prorogation” to find a distinction between the two cases; but a note to May’s work on parliamentary law, which I now have in my hand, meets that criticism. After saying in the text that the prisoners committed by the House of Commons “are immediately released from their confinement on a prorogation,” the note says:

But this law never extended to an adjournment, even when it was in the nature of a prorogation.

Take, for instance, the adjournments which habitually occur in the British Parliament at the Christmas holidays, at the Easter holidays, at the Whitsuntide holidays. You saw in the papers only the other day that Mr. Gladstone gave notice that the House of Commons would adjourn over several days on account of the Whitsuntide holidays; but nobody supposes that that is in the nature of a “prorogation,” or

that a committal by order of the House of Commons would expire on such an adjournment, as it would not expire on our adjournment for our Christmas holidays.

Therefore do the very precedents of the British Parliament answer completely the case put by the Senator from New York, who imagined a difficulty from occasional adjournments at the Christmas holidays. Sir, we are to look at this precisely as it is. The prorogation of the House of Commons is an adjournment without day, corresponding precisely to our adjournment without day. I believe in Massachusetts, down to this moment, when the house has agreed upon the time of its adjournment it gives notice to the Governor, who sends the secretary of the Commonwealth to prorogue it and the legislature is declared to be prorogued, thus following the language so familiar in England.

Then it is argued that this power to commit may be prolonged by a committee to sit during the vacation. But how so? The committee has no power to commit. The power to commit comes from the Senate. How does the sitting of the committee in the vacation add to its powers? It had no such power while the Senate is in session. How can it have any such power when the Senate has closed its session? But the power to protract the imprisonment of a citizen must be kindred with that to imprison.

I dismiss the whole argument founded upon the prolongation of the committee as entirely irrelevant. Prolong the committee, if you please, till doomsday; you can not by that in any way affect the liberty of the citizen. The citizen is imprisoned only by the order of the Senate, and the power to imprison or to detain expires with the session. Such, sir, is the rule that we have borrowed from England. Nor am I alone in thus interpreting it. I cited the other day the authentic work of the late Judge Cushing on the Law and Practice of Legislative Assemblies. I will, with your permission, read again his statement, as follows:

According to the parliamentary law of England there is a difference between the Lords and Commons in this respect: the former being authorized and the latter not, to imprison for a period beyond the session.

That is the testimony of Judge Cushing, who had devoted his life to the study of this subject. He then goes on:

In this country the power to imprison is either incidental to or expressly conferred upon all our legislative assemblies; and in some of the States it is also regulated by express constitutional provision.

Then he gives his conclusion:

Where it is not so regulated it is understood that the imprisonment terminates with the session.

Mark, if you please, "terminates with the session."

Here you have the authentic words of this special authority interpreting the English parliamentary law and also declaring our law. Who is there that can go behind these words? What Senator will set up his research or his conclusion against that of this exemplar? Who is there here that will venture to claim for the Senate a prerogative which this American authority disclaims for legislative bodies in our country unless expressly sanctioned by constitutional law?

I have shown that this power to commit beyond the session does not exist in the House of Commons from which we derive such prerogatives or privileges as we have; but the stream can not rise higher than the fountainhead. How, then, if the power does not exist in the House of Commons, can you find it here? You can not trace the present assump-

tion to any authentic legitimate fountain. If you attempt it, permit me to say you will fail, and the assumption will appear without authority, and therefore a usurpation. I so characterize it, feeling that I can not be called in question when I use this strong language. If you undertake to detain these prisoners beyond the expiration of this session you become usurpers; the Senate of the United States usurps power that does not belong to it, and, sir, this is more flagrant when it is considered that it usurps this power in order to wield it against the liberty of fellow-citizens.

When I state this conclusion I feel that I stand on supports that can not be shaken. I stand on English authorities sustained by American authorities. You can not find any exception. That in itself is an authority. If you could mention an exception, I should put it aside as an accident or an abuse, and not as an authority. The rule is fixed and positive, and I now have no hesitation in declaring that it will be the duty of the judge on a writ of *habeas corpus*, as soon as this Senate closes its session, to set these prisoners at liberty, unless the Senate has the good sense in advance to authorize their discharge. I do not doubt the power and the duty of the court. I am sure that no judge worthy a place on the bench will hesitate in this judgment. Should he, I would read to him the simple words of the Lord Chief Justice of England on the very point:

If the house ordered his imprisonment but for a week every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by *habeas corpus*.

There is no way of answering those words. They are as commanding on this occasion as if they were in the very text of our Constitution. When I say this, I do not speak vaguely, for I am sure that every student of this subject will admit that a judgment like that which I have adduced on a question of parliamentary law, and in favor of the rights of the subject, is of an authority in our country equal to the Constitution itself.

This brings me, sir, to an important point which I had hoped not to be called to discuss, but which the argument of the Senator from New York seems to press upon the consideration of the Senate and of the country, and therefore I shall open it to your attention even if I do not discuss it. It is this: That whatever may be the power even in England by parliamentary law, it by no means follows that the Senate of the United States has that power. What is the Senate? A body created by a written Constitution, enjoying certain powers described and defined in the Constitution itself. The Constitution says nothing about contempt or punishment for contempt. In order to obtain this power you must go into inference and deduction; you must infer it or imply it. In the case of impeachments the Senate becomes a judicial body, and it is reasonable to infer that it may have the power to compel the attendance of witnesses; in short, the powers of a court.

The Senate also, by express terms of the Constitution, has the power to expel a member. There, again, is an inquiry in its nature judicial, and should the Senate on such occasion examine witnesses and proceed as a court it may be inferred that it is so authorized by the Constitution. There is also a third power which the Senate possesses, judicial in character. It is to determine the election of its members.

Beyond these every power that the Senate undertakes to exercise on this subject is derived by inference. It does not stand on any text of the Constitution. It is a mere implication, and being adverse to the rights of the citizen it must be construed strictly. Now, I am not

ready to say, I do not say, that the Senate has not the power to institute a proceeding like that now in question. I am very clear that it has not the power by compulsory process to compel witnesses to testify in aid of legislation, as was once attempted in what was known familiarly as the Harper's Ferry investigating case.

But I do not undertake to say that it may not institute a proceeding like that in which we are now engaged; but I admit its legality with great hesitation and with sincere doubt. I doubt whether such an assumption can stand an argument in this Chamber; I doubt whether it can stand a discussion before a court of justice. How do you arrive at such a power? The Senator from Wisconsin [Mr. Carpenter] said the other day the Senate, according to the arguments of certain Senators, has not the power of a justice of the peace. The Senator never spoke truer words; the Senate has not the power of a justice of the peace. A justice of the peace is a court with the powers of a court. The Senate of the United States is not a court except in the cases to which I have already referred. It is a serious question whether it is a court in the proceeding which it has now seen fit to institute. Were it a court, then the argument of the Senator from Wisconsin might be applicable, and it might then claim the privileges of a court. It might proceed, if you please, to fine as well as to commit. The Senate in its discretion forbears to fine; it contents itself with imprisonment. But if it can imprison, why not fine? Why is not the whole catalogue of punishment open to its grasp.

I have reminded you, sir, that our powers, whatever they may be, are under a written Constitution, and in this important respect clearly distinguishable from the powers of the House of Commons, which are the growth of tradition and immemorial usage. I am not the first person to take this ground. I find it judicially asserted in most authentic judgments, to which I beg to call the attention of the Senate.

Mr. HOWE. Will the Senator allow me to inquire of him whether I understood him, when expressing a doubt of our power to commit a witness, to claim that we had power to fine a witness?

Mr. SUMNER. No, I did not. I said that the Senate had not the powers of a justice of the peace.

Mr. HOWE. I heard that distinctly.

Mr. SUMNER. I accepted the statement of the Senator from Wisconsin the other day, the Senator's colleague.

Mr. HOWE. I thought I understood the Senator to deny the power to commit, but to affirm the power to fine.

Mr. SUMNER. Oh, no.

I have in my hands the fourth volume of Moore's Privy Council Cases, cases argued in the privy council of England, many of them being cases that have come up from the colonies, and here is one being an appeal from the supreme court of the island of Newfoundland. I will read the marginal note:

The House of Assembly of the island of Newfoundland does not possess, as a legal incident, the power of arrest, with a view of adjudication on a contempt committed out of the house; but only such powers as are reasonably necessary for the proper exercise of its functions and duties as a local legislature.

Semble.—The House of Commons possess this power only by virtue of ancient usage and prescription; the *Lex et consuetudo Parliamenti*.

Semble.—The Crown, by its prerogative, can create a legislative assembly in a settled colony, subordinate to Parliament, but with supreme power within the limits of the colony for the government of its inhabitants; but,

Quere.—Whether it can bestow upon it an authority, namely, that of committing for contempt, not incidental to it by law.

I will not take time in reading extracts from the opinion of the court, which goes on the ground that the legislature of the colony is acting under a charter from the Crown, in the nature of a constitution, being a written text, and that it could not therefore claim for itself these vast, immense, unknown privileges and prerogatives, which by long usage, are recognized as belonging to the House of Commons. But the question was presented at a later day in another case before the privy council, which came from the supreme court of Van Diemen's Land. I cite now Moore's Privy Council Cases, volume eleven. This case was decided in 1858. It is therefore a recent authority. The marginal note is as follows:

The "*Lex et consuetudo Parliamenti*" applies exclusively to the House of Lords and House of Commons, in England, and is not conferred upon a supreme legislative assembly of a colony or settlement by the introduction of the common law of England into the colony.

No distinction in this respect exists between colonial legislative councils and assemblies whose power is derived by grant from the Crown, or created under the authority of an act of the imperial Parliament. 11 Moore's Privy Council Cases, 347.

You will see, sir, that by this decision the powers of a legislative assembly created by a charter are limited to the grants of the charter, and that the mere creation of the legislative body does not carry with it the law and custom of Parliament. In the course of his opinion Lord Chief Baron Pollock uses the following language. Alluding to a former decision he says of the court:

They held that the power of the House of Commons in England was part of the "*Lex et consuetudo Parliamenti*;" and the existence of that power in the Commons of Great Britain did not warrant the ascribing it to every supreme legislative council or assembly in the colonies. We think we are bound by the decision of the case of *Kielley v. Carson*.

If the legislative council of Van Diemen's Land can not claim the power they have exercised on the occasion before us as inherently belonging to the supreme legislative authority which they undoubtedly possess, they can not claim it under the statute as part of the common law of England (including the "*Lex et consuetudo Parliamenti*") transferred to the colony by 9 George IV, c. 83, sec. 24. The "*Lex et consuetudo Parliamenti*" apply exclusively to the Lords and Commons of this country, and do not apply to the supreme legislature of a colony by the introduction of the common law there. *Ibid.*, 396, 397.

Now, the question is directly presented by these decisions whether, under the written text of the Constitution of the United States, you can engraft upon our institutions the law and custom of Parliament. So far as these cases are applicable, they decide in the negative; but I will not press them to that extent. I adduce them for a more moderate purpose—simply to put the Senate on its guard against any assumption of power in this matter. I do not undertake to say to what extent the Senate may go; but with these authorities I warn it against proceeding on any doubtful practices. If there be any doubt, then do these authorities cry out to you to stop.

I have said, sir, that our powers here are limited by the Constitution. I may add, also, and the law in pursuance of the Constitution. And now I ask you to show me any text of the Constitution and to show me any text of law which authorizes the detention of these witnesses by the Senate. The Senate, be it understood, is not a court. Certainly, for this purpose and on this occasion, it is not a court. Show me the law. Does it exist? If it exists some learned Senator can point it out; but while Senators fail to point out any law sanctioning such a procedure I point out an immortal text in the Constitution of the United States, borrowed from Magna Charta, which it is difficult to disobey:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. * * * nor be deprived of life, liberty, or property, without due process of law.

“Without due process of law.” What is the meaning of that language? Judge Story tells us, as follows:

Lord Coke says that these latter words, *per legem terræ* (by the law of the land), mean by due process of law; that is, without due presentment or indictment, and being brought in to answer thereto by the process of the common law. So that this clause in effect affirms the right of trial according to the process and proceedings of the common law.

There, sir, is a living text of the Constitution of the United States binding upon this Senate. Where do you find any other text authorizing you to institute this proceeding; or if you institute the proceeding, must it not come within the limitations of this prohibition?

But I may be reminded that there are precedents. How many precedents are there for such a proceeding? We are familiar with all of them. The latest, the most authentic is that of Thaddeus Hyatt, proceeded against because he refused to testify before the Harper's Ferry investigating committee. Is that a precedent which you are disposed to follow? I am sure you would not if you read the weighty arguments in that proceeding made by the late John A. Andrew and Samuel E. Sewell, of Massachusetts, the accomplished jurist who still survives to us. Go still further back and you have the case, entirely like that before us, of Nugent, who was not pursued, I was going to say, as ferociously as the present witnesses have been pursued, for his custody was simply that of the house of the Sergeant-at-Arms, and it was recognized at that time that even that mild custody would expire with the session of the Senate. You have also the earlier precedent of 1800 in the case of Duane, which, I think, Senators would hesitate now to vindicate. Let them look at it and see whether they would sanction a similar proceeding at this day; whether such a tyranny could go on without shocking the public conscience and being recognized universally as an assault upon the liberty of the press.

Those are the cases furnished by the history of the Senate. Lord Denman in the case of *Stockdale v. Hansard*, the famous case to which I have referred, gives an answer to them as follows. I quote from the ninth volume of Adolphus and Ellis's Reports, page 155:

The practice of a ruling power in the State is but a feeble proof of its legality. I know not how long the practice of raising ship money had prevailed before the right was denied by Hampden; general warrants had been issued and enforced for centuries before they were questioned in actions by Wilkes and his associates, who, by bringing them to the test of law, procured their condemnation and abandonment. I apprehend that acquiescence on this subject proves, in the first place, too much; for the admitted and grossest abuses of privilege have never been questioned in Westminster Hall.

This proceeding has analogy with one well known in English history, that of the star chamber court, which you will find described by Mr. Hallam in his *Constitutional History of England* in chapter eight, and I refer to it merely for the sake of one single sentence, which I cite from this great author:

But precedents of usurped power can not establish a *legal authority* in defiance of the acknowledged law.

But where is the *legal authority* for the imprisonment of these witnesses? Only in mere inference, mere deduction—the merest inference; but surely you will not take away the liberty of the citizen on any such shadowy, evanescent apology, which is no apology, but only a sham and nothing else. I have already called attention to the argument of

Governor Andrew and Hon. S. E. Sewell, which will be found in the Congressional Globe under date of March 9, 1860. Did time permit I should quote from it at length; but I commend it to the Senate and all inquirers.

As an illustration of the doubts which environ this question, I call attention to the case of *Sanborn v. Carleton* (15 Gray's Rep., 399), where Chief Justice Shaw, of Massachusetts, gave the opinion of the court. The Senator from Wisconsin [Mr. Carpenter] will not question his character. After stating that "it is admitted in the arguments that there is no express provision in the Constitution of the United States giving this authority in terms," that is, the alleged authority of the Senate, he proceeds to say that there are questions on this subject "manifestly requiring great deliberation and research." And yet Senators treat them as settled. The Chief Justice then proceeds to announce that a warrant issued by order of the Senate of the United States for the arrest of a witness for contempt in refusing to appear before a committee of the Senate and addressed only to the Sergeant-at-Arms of the Senate can not be served in Massachusetts by a deputy. But this very question arises in the present proceedings. The managing editor of the Tribune, Mr. Whitelaw Reid, was summoned by a deputy and not by the Sergeant-at-Arms. Gracefully yielding to the illegal summons he appeared before the committee; but the question of power still remains; and this very question adds to the embarrassments of this question.

The extent of the abuse now in question will be seen if I call the attention of the Senate to the last report of the committee of investigation. By that report it appears that they undertook to examine two agents of the telegraph company, who, finally, at the last moment, when asked to make a definitive statement with regard to the copy of the treaty lodged with them for communication to New York, declined to answer. And you have now in this usurpation of the Senate an attempt to break into the telegraph offices of the United States. You raise for the first time in this Chamber one of the great questions of the times. Can you do any such thing?

MR. NYE. I should like to ask the Senator from Massachusetts if the courts have not broken into the telegraph offices?

MR. SUMNER. I am not speaking about the courts. I am speaking about the Senate of the United States.

MR. NYE. I ask the Senator if the Senate of the United States in this investigation, as long as it exists, has not all the authority of a court?

MR. SUMNER. I have already stated that it had not, that it had not the authority of a justice of the peace. The Senate proposes to break into the telegraph offices of the United States. In the guise of privilege it enters those penetralia and insists that the secrets shall be disclosed. What is the difference between a communication by telegraph and a communication by letter? Is there not a growing substitution of the telegram for the letter? Has not this taken place to an immense extent in England? Is it not now taking place to an immense extent in our own country?

Now, sir, mark the limitation of my language: I do not mean to say that the telegram is entitled to all the sacredness of the letter; but I do insist that the Senate, before it undertakes to break into the telegraph offices of the United States, shall calmly consider the question and see to what end the present disposition will carry them. Senators who have not entirely forgotten the recent history of England know

that the powerful cabinet of Sir Robert Peel for a time trembled under the imputation that one of its ablest members, Sir James Graham, who, Mr. Webster told me, in his judgment, was the best speaker in Parliament, had authorized the opening of the letters of Mazzini at the post-office. The subject was brought before Parliament night after night. You shall see how it was treated. The Liberal member from Dunsborough, Mr. Duncombe, in presenting it first—I read from Hansard—after inveighing against the opening of letters, said:

That was a system which the people of this country would not bear, which they ought not to bear, and he hoped, after the exposure which had taken place, that some means would be adopted for counteracting this insidious conduct of Her Majesty's ministers. It was disgraceful to a free country that such a system should be tolerated; it might do in Russia, aye, or even in France, or it might do in the Austrian dominions, it might do in Sardinia; but it did not suit the free air of this free country.

Lord Denman, always on the side of freedom, at the time Chief Justice of England, in the House of Lords said:

Could anything be more revolting to the feeling than that any man might have all his letters opened in consequence of some information respecting him having been given to the secretary of state, and that the contents of those letters which he might have never received might be made use of for the purpose of proceeding against him in a court of justice? The letters of man might be opened, and he might not have the slightest intimation that he was betrayed. Now, is such a state of things to be tolerated in a civilized country? He would say, without the slightest hesitation, that it ought not to be borne with for a single hour. * * *

Lord Brougham observed that he had not expressed any approval of the system; on the contrary, he distinctly stated that *nothing but absolute necessity for the safety of the State would justify it.*

I might occupy your time till evening in adducing the strong language of reprobation which was employed at that time. I will conclude by an extract from a speech of that remarkable Irish orator, Mr. Shiel, as follows:

That which is deemed utterly scandalous in private life ought not to be tolerated in any department of the State; and from the statute book which it dishonors this ignominious prerogative ought to be effaced forever.

That brings me to the point, sir, that there was an old statute of Queen Anne, I think, which authorized the opening of letters at the post-office under the order of a secretary of state; but notwithstanding that old statute the system was reprobated. And now it is proposed in the maintenance of the privileges of the Senate, not in the administration of justice before any court, but in the enforcement of the privileges of the Senate, to penetrate the secrets of the telegraph. I will not undertake to say that you can not do it. I content myself now with calling attention to the magnitude of the question and adducing it as a new reason why you should hesitate in this whole business. You see to what it conducts. You see in what direction you are traveling. You see how, if you persevere, you will shock the conscience and the sensibilities of the American people.

I do not believe that the American people will willingly see the telegraph rifled any more than they will see the post-office rifled in order to maintain mediæval, antediluvian privileges of the Senate, especially when those privileges can not be deduced from any text of the Constitution, but are simply inferred from the ancient primeval law and usage of Parliament. Not only the orators but the wits of the time denounced the attempt in England to open letters. Punch caricatured the secretary who attempted it as "Paul Pry at the post-office." But is not the Senate in the report of our committee "Paul Pry at the telegraph office?"

I make these remarks with a view of opening to the Senate the importance of the question before them, that they may once more hesitate and withdraw to the safe ground of the Constitution and the law, for there is nothing in the Constitution or in the law that can sanction the continued imprisonment of these witnesses. Even suppose your proceedings have been from the beginning in all respects just and proper; even suppose that you can vindicate them, in regard to which I beg leave to express a sincere doubt, you can not vindicate the attempt to continue these witnesses in custody when you go away. Then they are as free as you. If they are detained in prison it is only because you yourselves are imprisoned here in the discharge of your responsible duties. When your imprisonment comes to an end theirs comes to an end also. You can not go home and leave them captives. The law will step in and take them from your clutch. Better then in advance, by a proper and generous resolution, to order their discharge, so that the law will not be compelled to do what you fail to do.

Mr. BAYARD. Mr. President, there is but one portion of the resolution that I care to speak upon at this late period of the session, nor do I desire to occupy much of the time of the Senate upon that. I desire, however, to enter my protest against the idea that either House of Congress has any power to continue the imprisonment of a witness for refusing to answer the questions of one of its committees, or as a punishment of a party in contempt of its privileges, for a longer period than its own continuance in session.

I do not propose now to go into an examination of the derivation of the power of either of the deliberative assemblies that compose the Congress of the United States to punish for contempts. It is sufficient to say that power has been recognized by the highest judicial tribunal of our country. The Supreme Court of the United States in the case of *Anderson v. Dunn*, to be found in 6 Wheaton, have recognized the power of the Congress of the United States to punish for such contempts, and they have also considered the duration of the imprisonment for contempt, such punishment being imprisonment alone, and their decision is in accordance with the statement of the honorable Senator from Ohio who sits farthest from me [Mr. Sherman].

And here let me say, Mr. President, that it was gratifying to find that honorable Senator's voice raised in favor of this proposition and in opposition to the arbitrary exercise of discretionary powers by Congress, and still more refreshing was it to find the distinguished Senator from Massachusetts [Mr. Sumner] willing to come back and stand upon the fixed and narrow yet well-defined pathway of the Federal Constitution. I must congratulate him upon his return. I only hope that he there may stand. Oh, sir, how much better is it to hear of the limitations upon the powers of Congress, to hear Congress declared to be a body only invested with certain enumerated powers, and those under strict limitations, than to hear those other phrases which saluted our ears the other day under the high-sounding titles of a "generous imperialism," a "centralism of liberty," and "the imperialism of equal rights." Such phrases, in my opinion, had a sad and melancholy significance in the American Senate; and therefore it is that I congratulate that distinguished Senator upon his abandonment of such despotic and dangerous ideas and a return *ad antiquas vias*, upon which his feet can rest securely and his arguments for liberty safely depend.

But, Mr. President, in considering the subject of the liberty of an American citizen, whoever he may be, and the power of either of the deliberative assemblies to interfere with that liberty in the high dis-

cretion that may be necessarily vested in either House of Congress in order to punish contempts, to enforce their rules, and to secure the objects for which they were organized under the Constitution, I am not willing that we should stand only on the doctrines of the British Government. I am unwilling that we should borrow our precedents wholly from them, however fragrant they may be with the spirit of civil liberty. Our form of Government is still more limited than theirs, and I should be very sorry to admit that omnipotence in an American Congress which by the theory of the British constitution is confided to their Parliament.

Here is a case of imprisonment for refusing to answer questions of the Senate. A distinction is sought to be drawn by the Senator from New York [Mr. Conkling] between imprisonment as a punishment for contempt and imprisonment for refusing to answer questions propounded by a legislative committee. However possible it might be to discriminate between these two, nevertheless the result is the same of the power of the Senate to continue the imprisonment after its own session had ceased, either for the sake of punishment or simply as the confinement of a witness for refusing to answer. There is no difference in this fact, that the liberty of the citizen in either case is equally involved. I think it can be shown by reason and by law that the power of Congress to hold a man in custody either by way of punishment or to compel him to answer ceases when that Congress adjourns without day.

I will not now discuss the other question of a temporary adjournment for a few days or over the holidays. There may be a question there. But let us consider this case under its present facts, which are sufficient for our purpose, although I believe that, fixing the principle, you can very readily apply it to any case of adjournment.

The power is claimed to hold these witnesses for refusing to answer proper questions put to them by the special committee of the Senate. The contempt is not the contempt of the committee. The contempt is the contempt of the Senate which raised the committee. They alone are the judges of that contempt. They alone can punish it or say when the occasion for punishment arises.

That involves the further proposition that you can not delegate such a discretion as that to a committee. It is not capable of delegation, for, as I said before, it is not contempt of the committee, but of the body which originated the investigation. Therefore the discretion which shall fix the punishment and limit its duration must be vested necessarily in the body against which the contempt was directed and which alone has the power to punish it.

There is one illustration that will show how utterly dangerous and cruel, how fatal to all our ideas of limitations of power it would be if any American citizen could be placed in the position to which he would be consigned if the Senate refused to discharge parties in this position upon the expiration of the present session or its adjournment without day. The power that imprisons these witnesses can alone release them. If it be competent for either House of Congress to keep a man in prison after adjournment, then what human power can release him? He is not the subject of Executive clemency. Ordinarily, a man imprisoned under the sentence of a court of justice, say for a term of three or six months, should he fall ill and that fact be certified to the executive power wherever it might reside, he would be released from imprisonment either by pardon or by a writ of *habeas corpus*, because you should not in

that mode change a sentence of imprisonment for a few months into what would be a sentence of death. That alone would answer this case.

It will not do to say that Congress can delegate to a committee the power to take the answers of these prisoners to the questions, and that they carry with them into prison the key that will discharge them upon answering, because the sufficiency of the answer is, after all, the question in dispute. They have already answered. The committee have reported the answers as insufficient. The Senate has confirmed the action of the committee, and the witnesses have been remanded to the custody of the Sergeant-at-Arms until such time as they shall make proper answer to those questions. Who is to be the judge of the sufficiency of those answers? No one but the Senate of the United States. Then when they shall adjourn, as presently they will, until December, who shall say for them during the recess that the period has arrived when the discretion of the Senate has been satisfied by the answers of those witnesses? No man can say so, no committee can say so; and the witnesses must remain in imprisonment; and if the hand of sickness should touch them, soon perhaps to become the hand of death, and they were to die, I ask upon whose head would be their blood?

Mr. CONKLING. May I ask a question of the honorable Senator right there?

Mr. BAYARD. Certainly.

Mr. CONKLING. He having told us now, as I understand him, that the committee alone could not discharge these men, I ask him this question: Suppose while he is speaking to-day, and under the order of the Senate the witnesses should appear before the committee and answer these and other questions, does he think they would not be discharged under the order of the Senate without further proceedings; or does he think that it would be necessary for them to come here before we shall adjourn now and get a discharge and a certificate from the Senate, or wait until we assemble again and come and get it?

Mr. BAYARD. The answer is very plain. They come here and give what the committee are pleased to call an evasive answer. It may be an answer which some Senators of this body have already expressed themselves satisfied with. The majority are not; and among them are members of the special committee. Now, I repeat, when these parties come to answer, they may answer as they did before, or equally unsatisfactorily. Will that discharge them?

Mr. CONKLING. But the Senator, if he will pardon me, misapprehends the point of my question. I understand him to say that there is but one tribunal that can determine the sufficiency or the insufficiency of the answers of these witnesses, namely, the Senate itself; that the committee can not do that. In order to see whether he is right in that regard or not, I inquire of him regardless of the fact that we are going to adjourn, if the witnesses appeared before the committee and testified to the satisfaction of the committee, would that discharge them, purge them from their contempt, or not? If so, I beg to submit to him that would be just as true on Monday, should the Senate in the meantime adjourn, as it would be to-day; and if he is right in his proposition, then both Houses have from time immemorial been acting under an entire misapprehension, because both Houses have supposed that when under the order of the House a witness stood in contempt he was directed so to stand until he answered, and when he appeared before the committee and did answer, the contingency had happened upon which alone depended his right to be discharged.

Mr. BAYARD. The result of the honorable Senator's argument is simply this: that the liberty of an American citizen would depend solely upon the discretion of that Senator and his colleagues on the committee; and that, I say, is not the law of this country, and I pray God that it never may be. It is sufficient for me to say also that I consider it dangerous enough that the liberty of these men, or of any witnesses, even during the session of Congress, should depend upon the discretion of one of these legislative bodies. That is going quite far enough, without attempting to delegate that discretion to a committee, and therefore to place the liberty of two American citizens during the recess of Congress subject solely to the discretion of one of the committees of the Senate.

Mr. MORTON. If it be not in the power of the Senate, in the first appointment of a committee to make an investigation, to delegate to that committee in advance the power to commit a witness to prison in case the committee should determine that he refuses to answer their questions, and if the Senate does not delegate the power in advance to commit a witness, how can it delegate the power to commit afterward, and to determine the question whether he had purged his contempt?

Mr. BAYARD. The answer is plain enough. By the conceded powers and usage of Congress—and no one that I have heard has made a claim beyond this—where a committee of investigation has been appointed, and they found a recusant witness, it was their business to report his recusancy to the House in which the committee originated and that he should be brought to the bar, that the propriety of the question should first be passed upon by the House, and next the sufficiency of this answer; but they can not, even during their session, delegate to a committee the power to judge of the insufficiency of the answer, and to punish for contempt or commit for contumacy; but the powers of such committee are limited to reporting the facts for the decision of the House, should they deem the witness to have been in default.

Mr. CONKLING. Will the Senator permit me to ask a question which will test the question of the Senator from Indiana?

Mr. BAYARD. I have no objection, except that I desired just to express my own views as briefly as possible and without interruption.

Mr. CONKLING. I would not interrupt the Senator had he not been already interrupted. I beg to inquire of him in view of the question of the Senator from Indiana, how this idea of the Senator would apply to a court, if I may be allowed, notwithstanding what has been said, to resort to that illustration once more. A referee can not commit for contempt; but suppose a witness refuses to answer before a referee, and the referee reports the fact to the court, and the court commits the witness for contempt, and orders him to purge himself before the referee and the referee can hear his answer. But, says the Senator from Indiana, that can not be, because if the court could not delegate to the referee originally the power to commit it could not delegate to him the power to hear the answer and discharge him. We see in a very familiar illustration precisely the reverse of the doctrine held by him.

Mr. BAYARD. I ask the honorable Senator is it not perfectly plain that it is the right of the witness to have the Senate sit in judgment on the sufficiency of his answer, and how can they sit in judgment upon it if they have adjourned? The power to imprison and the power to discharge must reside in the same body and exist in it at the same time. There is a proposition which I think is perfectly sound and which covers this case.

Mr. MORTON. They are correlative.

Mr. BAYARD. They are correlative. The Senate can not, as a body, act except when it is in session, and with a constitutional quorum present. The Senate can not delegate this discretion of imprisonment for a refusal to answer to any committee and clothe them with power to judge of the sufficiency of the answers required by the Senate.

If these propositions are true, and it seems to me that their enunciation alone is sufficient, then the question of the duration of the imprisonment is settled, that it can not exist longer than the session of the Senate as a constitutional body.

There is another matter which it seems to me should be considered in this connection. Discretionary powers as in this case arise by implication under our constitution of government. The power of the Senate to make its rules implies the power to enforce its rules, and hence it is that persons who set those rules at defiance can certainly be subjected to their punitive powers. But what amount of power should be given for this purpose? Under our American theory it is the least possible power adequate for the end proposed, and no more. That is the doctrine approved by the Supreme Court of the United States in the case to which I have referred; and I may say further that Judge Johnson, delivering the opinion of the court, affirms this proposition:

And even to the duration of imprisonment a period is imposed by the nature of things, since the existence of the power that imprisons is indispensable to its continuance; and, although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment.

Now, where does the power to so imprison exist? We have shown that. It exists in the body. When the body is not in session, how can it be said that they can continue the exercise of the power?

Mr. President, there has been a relief, and I think a very fortunate and proper one, in the act of Congress of 1857. The honorable Senator from Ohio brought here the history of that law as contained in the Congressional debates of that period, and the report of the committee who framed the law. Congress has no necessity at this time further to exercise its discretion upon the subject, because the punishment of such recusant witnesses is provided for by public law. The act of Congress of 1857 has been referred to, which makes the refusal to answer committees of Congress duly constituted a penal offense. It further makes it the duty of the Presiding Officer of the body whose lawful authority has been so disregarded to certify that fact to the officers of the law, and let the regular penalties, of which the party has been advised in advance, fall upon him, if he should be proven, after a fair trial before a jury of his countrymen and under the law of the land, to be guilty of the offense alleged against him. I do not presume to enter upon the guilt or the innocence of the parties in this case. I do not care at this stage of the session to go into the fact as to whether they have answered sufficiently or not. I did not rise for that purpose, but for one much more important in the principle involved and its results to the country.

Mr. HILL. Will the Senator allow me a moment right there?

Mr. BAYARD. I should prefer to conclude my remarks.

Mr. HILL. If I interrupt the Senator's train of thoughts I will not do it, but I thought the question I proposed to ask would not do so. It occurred to my mind to suggest to the Senator this question: if the power of either House of Congress to punish for contempt beyond its own existence was complete and ample at the time of the passage of that statute, why did Congress pass it?

Mr. BAYARD. The honorable Senator is asking not only what is the law, but what is the reason of the law.

Mr. HILL. Yes, sir.

Mr. BAYARD. That is a difficult thing to know, because I presume men voted for it for very different reasons. But if I were asked to give the reasons for that law I should say it was owing to that abhorrence, proper and right as it is, among the people of this country to the exercise of a power that has no limits but the discretion of those who use it, and which may, therefore, be arbitrarily used. It was to establish a fixed rule that all men should know, by which they should be guided, and which should be a limitation upon the cruelty or the passion or the partisan feeling of any House of Congress that attempts to deal with a witness by prolonged imprisonment or by any other improper method of enforcing his submission to their wishes for refusing to answer their questions, or for any other alleged contempt.

I regard the law of 1857 as a substitute for Congressional discretion in cases of this character. I believe thoroughly in the power of either House of Congress to summon witnesses and to hold them during the session of that body, in their discretion, until proper answers shall be made. I deny the proposition that after Congress shall have adjourned that man, whoever he may be, can lawfully be held in confinement and deprived of his liberty for one hour; for if he can be held for one hour he may for the nine months that frequently elapse between the sessions of Congress, and during that time a sentence imposed of mere imprisonment for some alleged contempt may, by the operation of such a principle, become a sentence of death itself upon him; for, as I have said, the power to imprison him is correlative with the power to release him, and no other power has jurisdiction of his case. For the time being he is beyond the reach of local law, and may lose his life for want of the usual relief granted to malefactors whose health becomes impaired by imprisonment, but whose lives are not forfeited to the law.

The power to imprison and continue the imprisonment, and the power to discharge the prisoner, both exist in the same body; they both must exist at the same time; and how can you say, when the Senate has dispersed and no longer exists in session as a constitutional body that the power to discharge from imprisonment does exist anywhere? It is impossible. For that reason I aver that no more dangerous proposition could be assented to by Congress or the American people that they can imprison a citizen for contempt of their rules or hold him for any length of time after their adjournment until he answers questions in a manner which shall satisfy the discretion of one of their committees. That committee might be composed, not as in the present case, of men whom we all respect and could trust, but it might be composed of men of the most inveterate enmity toward the prisoner, and he, instead of having the benefit of the decision of that body toward whom he had been guilty of contempt as to whether his answers had been satisfactory, and as to whether he had sufficiently purged himself of the original contempt, would be the subject of malevolence and of a malevolent discretion exercised, not by the body to which he had a right to appeal, but a committee to whom it was impossible to have such discretionary powers delegated.

I therefore trust that there will be no hesitation in admitting the fact, and I would rather see it take the form even of a more general proposition, that neither House of Congress has the right to detain a man in custody, either for refusing to answer or for an alleged contempt, after its adjournment without day. Let us in the present case

illustrate that true and necessary doctrine of the free government of our fathers, that every power delegated to Congress, either expressly or by implication, is limited in its nature and just operation.

Mr. WILSON. I rise for the purpose of making a suggestion; and that is, that we fix 4 o'clock to take the vote on this resolution and at the same time agree to fix an hour for adjournment. We shall probably be able to close all our business by that time. I make the suggestion by common consent that we take the vote on this resolution at 4 o'clock.

The PRESIDENT *pro tempore*. The Senator from Massachusetts proposes that by unanimous consent the vote upon the pending resolution and all amendments thereto shall be taken at 4 o'clock. Is there any objection to that proposition?

Mr. EDMUNDS. This is a subject that has been so much discussed in favor of the unconstitutionality of continuing these witnesses in custody in order that they may answer before the committee that I should not feel justified at this time, as I have not yet had an opportunity to express my views about it, in agreeing to the proposition of my friend, although I should be very glad indeed to gratify him. I do not know that I shall be able, not being well to-day, to say anything; but I do not wish to preclude myself, if I feel able, from the right to make some remarks on this subject.

Mr. WILSON. My proposition would give us an hour, and I hope those who wish to pass the resolution will abstain from further discussion. I see that the Senator from Wisconsin [Mr. Howe] desires to speak on the subject, and I think the Senator from Vermont will have time enough to speak about it also.

Mr. EDMUNDS. I intend to take time enough. There is no doubt about that.

Mr. WILSON. Will you consent to fix 5 o'clock for the vote?

Mr. EDMUNDS. No, sir; I will not consent to any time. After the discussion which has been had, three-fourths of the time having been occupied by the friends of this resolution in advancing doctrines that I believe are fatal, not to this particular case, because it is of no consequence, but fatal to the powers of the Senate for all the purposes of enforcing the duties that belong to it, I do not feel justified, for one, in consenting to vote, as we have on some other questions of a merely political character, at a particular time. At the same time my friend will do me the justice to suppose that I do not wish to talk to his inconvenience; but my constituents and their views, as represented by me, have some rights here as well as my friend's.

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Mr. SUMNER. Let us go on this afternoon and meet on Monday.

Mr. EDMUNDS. That is the best thing.

Mr. FRELINGHUYSEN. Then you will certainly not have a quorum.

Mr. EDMUNDS. I do not know whether we shall have a quorum or not. The Senators who are here can not be blamed for the Senate not having a quorum. When this question which is now pending was acted upon before it was acted upon in a full Senate and upon the yeas and nays; and this precise proposition, and upon the precise grounds that are now proposed, to discharge these witnesses at the end of the session, was presented to the Senate, voted upon when all the States were represented and the Senators were all here, and defeated by a large majority. The Senate having then determined that it was lawful—because with me that question was merely a matter of principle; I do

not care as a mere question as to these particular persons whether they stay or not; but it involves a great deal more than any one question, because it settles it one way or the other for this body—a very large majority of the Senate, a majority of the whole Senate and of all the States, determined the question one way.

Now, then, when only one-half of the Senators are here, or just a fraction above one-half, and the others have gone away (and I do not excuse them for that; they ought to be here), it is proposed to reverse that judgment of the Senate and to set up another and final judgment, which will last longer and apply further than to-day or to-morrow, or to these persons who are confined. I hold that no man is obliged by any sense of kindness, or any other thing he would gladly do, by any agreement of his, to favor a contrivance of that character; and therefore I shall not consent to any agreement to take this vote. I shall not interpose objections to its being taken for the sake of delay. I think all Senators will do me the justice to say they have not known me to practice that particular kind of parliamentary tactics; but if I have anything to say that I think ought to be said for the sake of its being said, and if I feel able to say it, which is quite a doubtful question, then I shall take the liberty to do so.

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Mr. HOWE. Mr. President, the Senate does not seem quite agreed upon either of two points: First, how they shall vote upon this resolution, and, second, when they shall vote. Upon this last question I am quite indifferent. I am entirely willing the Senate shall come to a vote at any moment it chooses after I have submitted a few remarks upon the first question.

I have something to say as to how the Senate should vote upon the pending resolution when they come to act upon it at all. I do not propose to discuss the question of law which has been presented here so frequently and so ably, and which involves, as was well said by the Senator from New York, all cases of privilege and all cases of contempt. I do not propose to discuss them. What little I say will have reference to the case now before the Senate.

I should like, if it were possible, to bring the Senate and to bring the country to a little better understanding of what this question really is than either the Senate or the country seem to me now to possess. There is no attempt made here in the Senate to punish a newspaper for publishing intelligence, or to punish a correspondent for communicating that intelligence. That has been asserted and reasserted, here and elsewhere, over and over again. I want to say once more in the hearing of the Senate, and once more in the hearing of the country, that there is no such attempt as that on foot; nothing like it. We know that certain newspapers have published that paper called the treaty between the United States and Great Britain. We know who communicated that paper to those newspapers. The individuals avow it. They are within our reach. They are in our custody. The newspapers themselves are but a little distance from us. If the Senate thought it could punish those acts, and desired to punish those acts, the ground for inflicting that punishment is plain and manifest before us. We do not want to put any more questions. We do not want to spend any more time. The groundwork for proceeding against those individuals, and all the grounds we can ever have, we have now; and yet no motion is made for process against any of those gentlemen by anybody.

I do not think it a very violent inference, Mr. President, if we conclude from these few facts that there is no attempt and no wish to punish

those individuals for those acts. Then let all that pretense be laid out of this debate. Whoever asserts hereafter on the floor of the Senate, or outside of the Senate, that this is an attempt to punish newspapers for their enterprise in disseminating intelligence, or to punish correspondents for furnishing intelligence, makes that assertion at the hazard of whatever reputation for veracity he may now have left to him. It will be a question of veracity hereafter. There is no room for mistake.

And, Mr. President, I want to say one more thing. This is not an attempt to maintain the dignity of the Senate. There is no such labor imposed upon us, thank God! The dignity of the Senate was measured and fixed in the Constitution which created the Senate. There you must look to know what is the dignity of the Senate, and not here. Do not look here in order to get an understanding of the dignity of the Senate of the United States. I say that dignity was ascertained and was fixed in the Constitution, and I thank God for that. Why? Because, however we may behave here or elsewhere, we can not destroy or impeach that dignity. We may act very unlike a Senate; we may disgrace the character of a Senator or of Senators; but the Senate will stand just as the Constitution made it; and by and by the people of this great country, not the newspapers exactly, though they will take part in it, but the forty million people who occupy this great country will fill the Senate with men who know what belongs to the character of Senators and what belongs to the dignity of the Senate.

So, then, Mr. President, I dismiss myself from any effort to defend or maintain the dignity of the Senate.

There is another effort which I think belongs to us, which we can not honestly shirk. It is the duty of maintaining the authority of the Senate. When the Constitution created this body it clothed it with certain authority; and whatever that authority is, it is our business, not our right merely, it is our duty to defend, and not to abdicate it. We can do either. All the authority committed to the Senate was committed not for its own, but for the public good. Nevertheless, if it be resisted by one or many, we may exert or we may surrender it.

When, in 1861, the authority of law was resisted by a more formidable combination than that which now defies the Senate, among other constitutional agencies whose duty it was to enforce the law there were two brigadier generals. Each was clothed with the same authority. The one exerted that authority, the other surrendered it. That was the difference.

And now the law is defied again. It is evident the Senate may exert its authority, as Wool did, or it may surrender, like Twiggs.

But the Senate will permit me to remark that it is not our privilege to surrender, it is not our right to surrender, and if we do it, we do it in flagrant disregard of a manifest duty with which we are charged by the Constitution of the United States.

Now, Mr. President, what is the authority in question now? It is the authority to inquire, not who published the treaty, not what correspondent communicated it to the publishers—all these facts are fully known, but to inquire, what official, if any, betrayed the treaty to the correspondents.

There was no difference of opinion in the Senate as to its authority to institute that inquiry. It is already known that the whole Senate united to set the whole inquiry on foot. A committee was unanimously raised. Several witnesses were called before the committee who severally stated what they knew, but they did not happen to know who betrayed the treaty. Finally two witnesses came before the committee

who admitted they knew from whom the treaty was procured, but they declared they would not tell. That is the fact we are after.

No one, I repeat, wants to punish the New York Tribune or the Cincinnati Commercial for publishing that paper or any other paper which has got into their columns. No one wants to punish these witnesses for communicating it. But behind the newspapers and behind the correspondents there lurks some one, where I do not know, but there lurks somewhere the miscreant who has, in utter disregard of a trust reposed in him, communicated that paper to these correspondents. More than that, sir, we are not at liberty to shut our eyes nor our judgment to the conclusion that that man, whoever he is or wherever he is, took money for it. I know the witnesses did not expressly declare that they paid money; but, sir, you know, every Senator on this floor knows, that if they had not paid money they would have denied it, for they had an opportunity to deny it. Therefore I say we are not permitted to shut our eyes to the fact that this fellow, whoever he is or wherever he is, took money for betraying that paper to these correspondents.

Mr. SUMNER. Is the Senator aware that the managing editor of the Tribune, Mr. Whitelaw Reid, testified that the weekly accounts of the Tribune were not swollen?

Mr. CONKLING. Oh, that is not so; I beg the Senator's pardon.

Mr. SUMNER. That is my recollection of his testimony.

Mr. HOWE. I take the version of the testimony just as the Senator from Massachusetts states it to us. What then? I beg Senators not to put their understandings in their pockets to avoid the personal responsibility which rests upon every one of us in our action upon this question. What then? Whitelaw Reid, manifesting in that declaration, if he made it, feeling, whether he made that declaration or not, an interest in rebutting the inference that money was paid, answers so far as he knows; and what is his answer? That he does not find in the accounts of the establishment affirmative evidence that money was paid. But here within his call is a witness, who is in his employ, who can if he will tell whether money was paid or not, and whose salary Mr. Reid doubles to prevent his telling.

Mr. STEWART. Answering that question would not have criminated anybody, and he refuses to answer.

Mr. HOWE. No, answering the question would not criminate the witness. There is nothing in the world to prevent him answering except his disposition to answer. Clothe him with that, and he will answer; and Whitelaw Reid could clothe him with that disposition just by the motion of his finger, if he pleased.

So, Mr. President, the Senator from Massachusetts must not shut his eyes, nor you nor I shut ours, to the conclusion that the treaty was handed over to the witnesses, and money was received as the equivalent for it, and whoever did that deed is in the employ of the Government. That is the man your committee has been trying to uncover, and I beg leave to say to my honorable friends on this floor that every day they have spent here and every word they have uttered to embarrass or to check this investigation have not been in the interest of the New York Tribune, have not been in the interest of its correspondents, have not been in the interests of the press, but the whole of it has been expended to cover up the man who took—my friend [Mr. Wilson] shakes his head to that conclusion—yes, the whole of it has been done to cover up that man who took cash for the betrayal of official trust. I do not say that such is the motive of my friend from Massachusetts; but I say such is the effect, the result of his effort. The only thing concealed is

the name of that man who sold the treaty to the witnesses, and when they answer, according to the order of the Senate, that is the only thing we shall know that we do not know to-day. That would be the only truth uncovered. So the only result of all this expenditure of learning and eloquence is to conceal from the country the name of that officer who sells confidence for cash.

Well now, sir, I am so constituted as to believe that the people have a right to know that man's name, to know what place he fills, what trust he still holds, what opportunities he yet has to betray his country and its interests. I think the public have an interest in knowing that. Therefore I want the investigation to continue. It will harm nobody but that individual, and I am not solicitous about his welfare. I do not feel especially tender of him.

Now, why should the witnesses not answer? It was said by the Senator from Ohio [Mr. Sherman] this morning that he was very much interested in setting this investigation on foot and prosecuting it until he found that the Senate was substantially exonerated by the testimony already adduced, and when he had come to that conclusion he lost all interest in the investigation. To that I have two answers to make: first, that the public will not be satisfied simply by the assurance that the treaty was not sold by a Senator. I did not expect any one of us would be caught in the transaction when the investigation was entered upon. I thought then, what I think now, that the paper did not go to the public without a breach of confidence on the part of somebody engaged in the public service, and the people want to know him, let him hold what position he may.

It may be a little more important to get a rascal out of the Senate than to get him out of a subordinate position, but it is important to get him out of all positions; so that my interest will continue even when I know that no Senator and no official of the Senate is connected with this transaction or implicated by it. But I must add my testimony to the testimony of the Senator from New York [Mr. Conkling] given here this afternoon, when I say that the Senate is not yet exonerated. Why do I say so? First, because the investigation is not complete; second, because we know that somebody let that treaty out, and I defy any intelligence on this floor or off it to say that the exoneration is more complete of the Senate and of its officers than it is of everybody else connected with the Government. The evidence is quite as conclusive that the treaty was not betrayed at the State Department or the Printing Office as it is that it was not betrayed by the Senate. But it is evident that the Senate can not be exonerated, and there can not be anybody exonerated, and for the reasons urged so cogently by the Senator from New York this afternoon, until we know who is implicated. We can not know who is innocent till we know who is guilty, and why? Until these witnesses tell us from whom they received the paper it is impossible for us to know who imparted it; we can not trace it back. That is the difficulty. We have got to trace the paper back. It is very easy for the witnesses to testify that they did not receive the treaty from a Senate official, but until they reveal the party from whom they did receive it we can not know that that party did not obtain it through the Senate.

There is another reason why I think we are authorized to conclude that the Senate is not exonerated by the answers of these witnesses; and that is, that the other day, in spite of their testimony, we saw here the honorable Senator from Indiana [Mr. Morton], we saw here the honorable Senator from New York [Mr. Fenton], we saw here, if I

remember aright, the honorable Senator from Massachusetts [Mr. Sumner], one after the other rising—I am not sure that the Senator from Massachusetts took part on that occasion——

Mr. SUMNER. I did.

Mr. HOWE. We saw them, one after the other, rising here in their places to read arguments and letters or make speeches to show that they were not guilty. But if the witnesses had exonerated them, what need was there that they exonerate themselves? Mr. President, do not let me be misunderstood. Do not let any man infer that I think either of these Senators was called upon to make that effort at that time. I am quite satisfied that they were not guilty, not because the witnesses exculpate them, but because their characters place them above the need of exculpation. On the contrary, I must be allowed to say, I was profoundly sorry that either of those Senators felt called upon to utter a word in his own defense. I was profoundly sorry that either of them should mistake the office of a Senator so far as to plead in his own defense here on this floor, instead of appealing to the authority of the Senate to compel a contumacious witness to utter that easy word which would place them and place us all beyond the need of defense.

So, Mr. President, I can not conclude that the Senate and its officers are so completely exonerated as it is their privilege to be, and as they may be if they will exert the authority which the Constitution has intrusted to them.

But, Mr. President, what other reason is urged why these witnesses should not answer? What reason do they urge themselves? They were called to the bar of the Senate, and they presented their objections to answering these inquiries. What were they? That they could not answer those questions without compromising their professional character. They told us that they held themselves as maintaining some such relation with the men who sold them that treaty as the lawyer holds with his client, as the priests holds with his penitent. That was their reason for refusing to disclose the name of the treaty broker. Is it necessary for me to tell the Senate or to tell the witnesses that they are mistaken as to the relation existing between them and their factor of whom they bought the treaty; that there are no such relations and can be no such relations between such parties as those which are tolerated between the attorney and his client, or those which exist between the confessor and the penitent kneeling before him? When I go to you, Mr. President [Mr. Casserly in the chair], and retain you in my defense, the law knows it to be so important to my rights as a defendant that you shall know the whole truth of the accusation against me, as that it allows me to impart that truth to you in the confidence of that employment, and excuses you from divulging that narration to the court. But, sir, it is only what I confide to you, and not what you see me do, that the law permits you to withhold from testimony. If you see me commit an offense, I can not shut your mouth against the revelation of it by putting money in your pocket and employing you as my attorney. What we want of these witnesses is, not that they shall tell what the unknown treaty broker told them, but what they saw done.

But whatever the witnesses may think of their obligations to the man who sold them the treaty, what will they say of their obligations to the United States? Whatever they may think of their duties as correspondents of a newspaper, what do they think of their duties as citizens? Have all their obligations to their country been merged in and subordinated to their duties to the treaty broker? I know any one of us can transfer the allegiance he owes to the United States, but it

is only by leaving this country; but standing here on this soil, within this jurisdiction, we can not be absolved from our allegiance to the United States nor assume an allegiance to any other power, least of all assume an allegiance to men who in the employ of the Government barter for money the trusts that are reposed in their hands. Allegiance can not be transferred in that way, and no such allegiance can be assumed in any way.

Mr. President, I have heard it said that these witnesses promised they would not divulge the name of the party who communicated the treaty to them and that they can not speak now without violating that promise. I think there is no such evidence in the case. I am not sure but that one of the witnesses did say that he made that promise.

Mr. CONKLING. No; he declined to say whether he had or not.

Mr. HOWE. The Senator is more familiar with the testimony than I am. I was inclined to think that one of the witnesses did say that he had made such a promise, and that the other would not say whether he had made any or not. But admit that both made the promise and that they plead it here. "We are men of truth; we promised this fellow when we met him in some dark alley and took the paper from him and paid him his money, we promised him we would not reveal his name. Now, you must not make us break that promise." Is that the only promise that these witnesses have made? They were called before your committee. Did they not make any promise there? Did they not stand before that committee, did they not stand before God, and did they not in the presence of that God and before that committee take a solemn oath that they would tell "the whole truth?" What has become of that promise? What has become of the obligation of that promise? Is that the only idle one they ever made? Are they going to preserve their honor by keeping that promise which they made in the dark to somebody we do not know, and yet trample upon the obligations of that solemn oath they took in the name of the law and before the law?

But, Mr. President, such promises as those are not respected in the forums of law or in the forum of conscience. We can not release ourselves from the obligation to speak truth simply by promising not to speak it. If we could any reluctant witness might disqualify himself from testifying by promising not to testify.

So I conclude that these witnesses, as men of honor, are bound to regard the obligations of their oath and not the obligations of that promise, if they made any; and they are bound to regard their duties to the country, and not their duties to this unknown broker in official trusts.

Now, sir, I have heard one very plausible argument urged in support of this resolution. There are those on this floor whose opinions are entitled to very great respect, and for whose opinions I have the utmost respect, able lawyers, who tell you that your authority to imprison ends under the law when you adjourn without day. If that were clearly so, I should not vote for the resolution, nor would my friend from Massachusetts [Mr. Wilson] offer such a resolution, and why? Because it being plainly the duty of the Sergeant-at-Arms to discharge these men when we go home he would do it, and we would no more think of passing a resolution instructing him to discharge that plain duty than we should of passing a resolution to instruct him to put out the fires in the furnaces downstairs. If it is not his duty at all then it is no reason for voting for the resolution. If it is a doubtful question, as I suppose the Senator will admit in justification of his own resolution that it is, I appeal to him as

a law-abiding citizen if he had not better leave this question to be settled by the judicial tribunals rather than seek to settle it by this tribunal. His colleague, the other Senator from Massachusetts [Mr. Sumner], tells us that we have only very limited judicial powers, we have not judicial authority enough to be trusted with the jurisdiction of a justice of the peace. Had we better assume jurisdiction of this great constitutional question which lies at the foundation of the body itself? Had we not better let that remain to be settled by the judicial tribunals of the country, if it is doubtful? It seems to me so.

Mr. THURMAN. Is the Senator quite certain that a court will look into this matter at all? The Senate having committed these parties as guilty of a contempt, which is a fact found by the Senate, and which it was within our jurisdiction to find, and their imprisonment being in the execution of a sentence that they shall be imprisoned, is he quite certain that a court will look into that matter at all? A writ of habeas corpus is not a writ of error, as the Senator well knows. I admit there have been contradictory decisions on that question, but does he know how this court here will decide? But further, is he willing that the rights and powers of the Senate of the United States shall rest on the decision of some little judge in the District of Columbia, and follow his decision forever?

Mr. HOWE. Those are pertinent questions. I think I can answer both of them with a very few words.

First, am I quite sure that the courts would consider this question? I answer that I am entirely satisfied, I have not the shadow of a doubt but what if we adjourn and leave these parties in custody of the Sergeant-at-Arms, and he retains them in custody, and they sue out a writ of *habeas corpus* returnable before any judge having jurisdiction to hear that writ, I am just as sure as I am that the court continues to exist that it will hear and will determine that question rightly or wrongly, I do not know which. I certainly cannot foreknow whether they will determine it one way or the other. But if they determine it right or wrong it may be reheard in any other tribunal which has appellate jurisdiction, and so may reach the highest judicial tribunal which can rehear causes heard before the one in which the writ was originally returned. So I answer my friend from Ohio, that I am dead sure the court will hear and determine that question; they must, and pronounce judgment upon it one way or the other. But if I am to take as part of the question the suggestion of the honorable Senator that the courts may say the order of commitment was made by a tribunal having jurisdiction, and therefore they will not go behind that order, why that determines the whole question; that just prescribes what their judgment should be.

But the Senator asks me if I am willing to have our powers judged and measured by any little district court that may sit here in the District of Columbia. I am not exactly willing to have it measured by such a tribunal as that and it will not be, but measured in this regard by the judicial tribunals of the country; willing or not willing it will be, and I cannot help myself nor can my friend, because if we do commit any fellow citizen of ours, or any man within our jurisdiction to custody illegally, in the judgment of the judicial tribunals, they will discharge him, whether it suits us or not. So it is not worth while to debate about that.

Mr. THURMAN. I think if the Senator will look into the statutes he will find no mode whatever by which the question, if taken on *habeas corpus* before a judge of this District, can be taken to the Supreme Court of the United States on the application of the Government.

Mr. HOWE. That may be so, and I am inclined to think it is so. It simply follows that the judgment of the District court would be final on the return. That is all. The idea ought to have occurred to me, but it did not, until suggested by my friend from New York [Mr. Conkling], that if it were not so, that the courts would take jurisdiction of this question, where did you get all the authorities which have been paraded here? Have not those authorities been furnished to you in cases in which the courts have taken jurisdiction?

Mr. THURMAN. No. I will state to the Senator this: I do not say that a court would not have jurisdiction in *habeas corpus* after the adjournment of this session. If the law is as contended for by my colleague, then I do think the court might discharge on a *habeas corpus*. Nothing is clearer than that the court would have no right to discharge these witnesses this day while we are in session, because they have been committed by a body having jurisdiction to commit them, and that is in execution of the sentence for their contempt; not as punishment, I admit, but a judgment which finds that they are guilty of contempt and that subjects them to this imprisonment until they have purged themselves of their contempt; and one of the best-considered cases, Maulsby's case, was decided by the chief justice of the court of appeals of Maryland on precisely that question. There Maulsby, one of the most distinguished lawyers of Maryland, was committed until he should appear before the grand jury and produce certain papers to the grand jury. The chief justice of the court of appeals of Maryland held that that was a sentence which no court could inquire into on *habeas corpus*, and that for the very plain reason that a writ of *habeas corpus* is not a writ of error; but the judge discharged him in that case on another ground. He was to continue in custody until he purged himself of contempt by appearing before the grand jury and producing the papers he had been required to produce. After that the court discharged the grand jury and adjourned, so that it was impossible for him to purge himself of the contempt; it became an utter impossibility, and the chief justice said, "That being the case, we do not undertake to inquire whether the sentence was right or wrong, but owing to a subsequent event his imprisonment has become illegal, and we discharge him." But now, when you continue a committee in existence with power to receive the answer, then I submit to the Senator whether it is quite clear that a court will discharge the witness.

Mr. HOWE. No, sir; I have not the slightest idea that the court will discharge in that case. Why? Because I do not agree with the Senator's colleague that the imprisonment would be illegal. If we do not order the Sergeant-at-Arms to discharge these men, or if we do, if they are found in the custody of the Sergeant-at-Arms after we have left here, and they see fit to appeal to the judicial tribunals to inquire into the legality of that restraint, that confinement to which they are then subjected, the court will say that that restraint is illegal, unless the court find that they are committed by the order of a tribunal which had authority to commit and committed for a term which has not then expired. If they find that the order of commitment issued from a tribunal which had no authority to commit, or that the term for which the tribunal could commit has expired, in either case the court will unquestionably order their discharge. The Senator from Ohio does not doubt either of these propositions. They cover the whole case.

Mr. President, I was remonstrating against my friends here, my conservative friends like the Senator from Massachusetts on my right [Mr. Wilson], assuming jurisdiction of this great constitutional question, because they admit it is doubtful. I say let it go to the judicial tribu-

nals which can settle it. Upon the question how that court will decide I have a single remark to make.

Mr. President, whatever the Constitution does or does not say, this question arises upon it: Have we authority to swear witnesses before ourselves or before a committee? We have or we have not, one of the two. Is there a Senator on this floor who will deny that we have such authority? I have not heard one. But having propounded a question, and a pertinent question, a proper question as it must be, what is the obligation imposed upon the witness? Is it an obligation to answer or not according to his pleasure? It is or it is not. You are within the control of the witness or he is within your control, one of the two. If the doubt suggested by the Senator from Massachusetts [Mr. Sumner] just now as to our authority to commit at all a contumacious witness—

Mr. SUMNER. In a case like this?

Mr. HOWE. "In a case like this." Is that a qualifying remark? Do I understand from that that the Senator concedes that in a proper case we have the right to put a question and to commit for not answering?

Mr. SUMNER. Where the Senate is a court.

Mr. HOWE. And only where it is a court?

Mr. SUMNER. I only raised a doubt beyond that.

Mr. HOWE. Well, Mr. President, think of the attitude of the honorable Senator from Massachusetts before the country, think of his standing here in the Senate of the United States afflicted with a doubt upon a question of law! [Laughter.] But if he can be tolerated with doubts in any case, which seems to me to be impossible on such questions as this, the Senator from Massachusetts ought to have a definite and fixed opinion upon this point, to wit, whether the Senate of the United States can put a pertinent question to a witness and compel an answer. The country is nearly one hundred years old; a great many committees have been raised, a great many witnesses have been sworn before them, and either these were all usurpations or it is settled that the Senate is clothed with such authority as that.

Well, if we have the authority to raise a committee and to put a question in any case, we are the judges of what the case shall be, nobody else; and having raised the committee and put the question, then it presents that other point, is the obligation of the witness only this, to answer or not as he chooses? He must answer according to his pleasure or he must answer according to ours. Is there any other alternative? If he can not decide the question we must. Is there a Senator on this floor who will say that he shall decide it and decide it conclusively, finally? Is there one? If there is, I should like to see him, but I think I would prefer to have a distant view of him.

There is not a Senator here who will affirm that the witness may suit his own pleasure, may rightfully, legally, consult his own pleasure as to whether he will answer or not. Then, if he can not consult his own wishes he must defer to the command of the Senate, must he not? If his answering is not a voluntary thing, we have a right to compel the answer, have we not? If we have a right to compel it, what are your means for compelling? I hear Senators say that we may commit in case of contempt, but commit only for a certain time, and there is a good deal of doubt expressed as to the time for which we may commit. I will not quarrel with any Senator here about the question of time. I only ask the authority to commit for one minute as retribution for one minute's contempt. That is all. I do not pretend to be a lawyer, but I think every man of common sense knows that if you have authority to commit for a contempt, your commitment may continue just as long

as the contempt continues; and the contempt continues just as long as you furnish the contumacious witness with an opportunity to answer and he refuses to answer. Is not that clear? Is there any doubt about it? The power to commit is not put in your hands to punish, but it is put into your hands to enforce obedience.

Mr. WILSON. What is the wisdom of continuing this thing?

Mr. HOWE. Simply because the contempt continues. Simply because the nation, the people of the United States, have put a proper, pertinent, question to these witnesses, calculated, designed, intended to disclose the fact that this whole country wants to know, who was the man who sold the treaty, and they will not answer. They are in contempt. So says the Senator, so say all Senators; they are in contempt. What do you mean by saying they are in contempt of the Senate? Why, that they defy the authority of the Senate; they snap their fingers in your face, and if there was any one circumstance which could be adduced in any given case to aggravate the contempt that is wanting in this case, I do not know what that circumstance is? Because they laugh at you, because they defy you by word of mouth, because you are laughed at everywhere, because you are taunted with the fact that you cannot get an answer from them, because you are told that they are under heavy pay not to answer, because the Senate is systematically laughed at for its impotence. That is why I would have this question answered.

Mr. President, it seems me the whole case is just here; those witnesses are in contempt of the Senate, and they must get out of that contempt or we must get into it, one of the two. I do not see any other alternative. I will not say more as to which should be done. If that question is to be settled upon a consideration of the relative distances the two parties would have to travel, I do not know but that we had better go in. I am not sure but the Senate may get into contempt with less travel than the witnesses can get out of it. [Laughter.]

Mr. President, the Senate will decide this matter, and I am going to submit it in a very short time. Remember, that the only purpose of urging an answer from those witnesses is to uncover some man who with one hand is taking cash out of the Treasury for keeping your confidence, and who with the other hand is taking cash from individuals for betraying it. The only purpose we have is to uncover that man. That is the object we are after. Now, if you say these witnesses shall not be forced to answer that question, I must acquiesce in the decision; but I have one request to make of the Senate; never, while the Senate is composed of those who now occupy its seats, let another committee of investigation be raised; do not allow yourselves to be mocked again. Submit to the humiliation now, but do not expose yourselves to it again.

And another thing I have to ask, Mr. President, and I have to ask this as a matter of personal right to each one of us. Never let your doors be closed again; do not ever entertain a motion to go into secret session again. Why? Because you do not know but some one here will betray the transactions of that confidential session, and you do know and will have determined that you can not ascertain who does it. Do not, therefore, ever entertain another motion to close these doors. If you do, do it some time when I am not here, for I am absolutely afraid I shall hear the angels above hiss the mover.

Mr. President, there is one other feature in this case that I want to call a moment's attention to. There has been a conduct observed out of the Senate and in some respects in the Senate toward your commit-

tee that I do not think is quite fair or just. Out of the Senate you know that two members of your committee have been systematically vilified, traduced, abused, not everywhere, but in many of the public journals, and particularly in the columns of the New York Tribune, that one journal which seems to feel itself the most interested in this controversy. The New York Tribune has no interest in it whatever; that is made manifest already; and yet the fact is, and we know it, that two members of your committee have been day after day in the columns of that journal held up to public reproach and condemnation so far as that journal is capable of doing it.

Now, the thing I thought the Senate ought to take notice of and to establish beyond all controversy was this: That your committee had done nothing more in this business than to discharge a duty which you delegated to them, not a duty which they voluntarily assumed. You imposed a duty upon them, and they have addressed themselves steadily to the discharge of that duty, and I thought it was due to them that the Senate should testify as much as that. Of course the New York Tribune is not responsible to us for what it says about our members, or about the Senate itself. It has a right to publish matter, and to a great extent may select the matter it will publish. How far it is responsible to individuals is a question which does not arise here. How far it is responsible to the Senate is a question which has not arisen, in my judgment, upon anything that has yet appeared. But that our duty is plain to stand by and to defend the conduct of our own committees and of our own members till they transgress some duty which they owe, not to the press, but to the Senate, seems to me to be very plain.

Mr. THURMAN. Will the Senator allow me to ask him a question?

Mr. HOWE. Certainly.

Mr. THURMAN. Does the Senator think that the passage of a resolution for the discharge of these witnesses would be any reflection on the committee?

Mr. HOWE. No, sir; not at all. I do not insist upon anything of the kind; but in the course of this debate two or three remarks have been dropped by Senators which I thought were not calculated to relieve the committee from the reproach which I think has unjustly been heaped upon them. I want to do my honorable friend from Ohio [Mr. Thurman] the justice to take notice and to record here that he did step forward and to the extent of his testimony and his influence did vindicate the action of those two members of the committee. But the Senator from Massachusetts [Mr. Wilson]—I just call attention to the fact, for I know he was sorry for it—did, by an unfortunate and inadvertent remark of his yesterday, rather point the finger of reproach to those two individuals. That he explained on the spot, and I let that pass. But the Senator from Ohio who should sit nearest to me [Mr. Sherman] this morning, while calling attention to these very parties, I thought very unfortunately, both in manner and matter, took upon himself to say really that he believed the committee had done no more than it was their right to do. Mr. President, there is no right of the committee involved here whatever. It is a question of duty. They have discharged that duty, or they have come short of that duty, or they have transcended that duty. They have asserted no rights; they have claimed no rights; they have exercised no rights; and I am as an individual entirely unwilling to see them tied up and thrashed before the country for what is not sin at all, or if it be sin, is the sin of the Senate and not theirs.

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The roll was called and the result announced—yeas 16, nays 20; as follows:

Yeas—Messrs. Anthony, Caldwell,* Clayton, Cole, Conkling, Flanagan, Frelinghuysen, Harlan, Hitchcock, Logan, Nye, Osborn, Patterson, Sawyer, Scott, and Wright—16.

Nays—Messrs. Bayard, Blair, Corbett, Cragin, Edmunds, Fenton, Gilbert, Hamilton of Texas, Hill, Howe, Morton, Schurz, Sherman, Sprague, Stevenson, Sumner, Thurman, Tipton, Wilson, and Windom—20.

Absent—Messrs. Ames, Boreman, Brownlow, Buckingham, Cameron, Carpenter, Casserly, Chandler, Cooper, Davis of Kentucky, Davis of West Virginia, Ferry of Connecticut, Ferry of Michigan, Hamilton of Maryland, Hamlin, Johnston, Kellogg, Kelly, Lewis, Morrill of Maine, Morrill of Vermont, Pomeroy, Pool, Pratt, Ramsey, Rice, Robertson, Saulsbury, Spencer, Stewart, Stockton, Trumbull, Vickers, and West—34.

So the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the resolution of the Senator from Massachusetts [Mr. Wilson].

Mr. EDMUNDS. Mr. President, I do not intend to occupy the time of the Senate. I have not all the virtues that my friend from Massachusetts possesses, and therefore I am not in the habit of suspecting other people of doing virtuous things; I will put it in a way that shall not be offensive. If I felt entirely well, or anything like it, I should occupy an hour of the time of the Senate in discussing the question of law that has been raised here as to the power of the Senate over these witnesses, and the general question of the propriety of continuing them in custody, which the full Senate has once decided by a majority of the representatives of all the States ought to be done and should be done. I should like to discuss the propriety of continuing that custody, upon the evidence which has been taken, if you can call it evidence where all the witnesses who know refuse to state anything, in order that we might see whether or not what the honorable Senator from Ohio who sits nearest me [Mr. Sherman] has stated is true. If I understood him, he stated that the Senate was exculpated, and therefore it would be merely a sentiment for the vindication of law and not for the protection of our own honor if we should go any further.

But, Mr. President, I have not the physical ability to go into a discussion of either of these questions at this time. I only think it right to say that I see on looking at this testimony, what I did not know fully before, that it appears that the clerk of one of the committees of this body assisted in the Tribune office in copying this document from the stolen or otherwise obtained treaty, on the occasion when it was sent over, and that another officer of the Senate, if not more than one—I do not know how many, as I have not had time to run it clear through—had some connection with some of these copies, and made frequent visits to newspaper row, whether innocent or otherwise it is impossible to tell until we know the truth; innocent, I presume. But in this state of the thing there is nothing, in my opinion, that will clear up the honor of the Senate, if there is any honor about it, which I do not presume to assert by any means [laughter], except to know the truth. I did not mean to say “honor about the Senate;” I should not make a remark of that kind; but I mean “honor about the obligation not to disclose the secrets of the Senate.” There is nothing that will convince any intelligent person who reads this testimony that our skirts are entirely clear—when I say “our” I do not mean Senators, but I mean the body of people who are employed here all together—until we know the truth.

But, inasmuch as it does not seem to be convenient to know the

truth just now, I suppose we shall have to do without it, and I have only occupied these two or three minutes of the time of the Senate in explaining why, after what was said a little while ago, I did not proceed to exercise what I should otherwise have considered to be a duty, by discussing the question in these two aspects, from the fact that I am physically incapable of doing so.

Now, I hope my friend from Massachusetts will not suspect that I have wished to put him off or disoblige him.

The PRESIDING OFFICER. The question is on the resolution of the Senator from Massachusetts, upon which the yeas and nays have been ordered.

Mr. CONKLING. Let it be read as it stands now.

The PRESIDING OFFICER. The resolution will be read.

The Chief Clerk read the resolution, as follows:

Resolved, That the Sergeant-at-Arms of the Senate be, and he is hereby, directed to discharge Z. L. White and H. J. Ramsdell, now held in custody by him under an order of the Senate, immediately upon the final adjournment of the present special session of the Senate.

The Secretary proceeded to call the roll.

The result was announced—yeas 23, nays 13; as follows:

Yeas—Messrs. Bayard, Blair, Casserly, Corbett, Cragin, Fenton, Frelinghuysen, Gilbert, Hamilton of Texas, Harlan, Hill, Logan, Morton, Schurz, Sherman, Sprague, Stevenson, Stockton, Sumner, Thurman, Tipton, Wilson, and Windom—23.

Nays—Messrs. Caldwell, Clayton, Cole, Conkling, Edmunds, Flanagan, Hitchcock, Howe, Nye, Osborn, Sawyer, Scott, and Wright—13.

Absent—Messrs. Ames, Anthony, Boreman, Brownlow, Buckingham, Cameron, Carpenter, Chandler, Cooper, Davis of Kentucky, Davis of West Virginia, Ferry of Connecticut, Ferry of Michigan, Hamilton of Maryland, Hamlin, Johnston, Kellogg, Kelly, Lewis, Morrill of Maine, Morrill of Vermont, Patterson, Pomeroy, Pool, Pratt, Ramsey, Rice, Robertson, Saulsbury, Spencer, Stewart, Trumbull, Vickers, and West—34.

So the resolution was agreed to.

POWER OF COMMITTEES OVER WITNESSES.

Mr. THURMAN. I offer this resolution, and ask for its immediate consideration:

Resolved, That the Judiciary Committee are hereby instructed to inquire and report to the Senate, at its next session, what are the powers of the Senate to imprison a witness refusing an answer to a proper question put to him by the Senate or one of its committees, and especially whether imprisonment for such a cause can in any case extend beyond the session of the Senate at which the imprisonment is ordered.

Mr. EDMUNDS. Let that go over.

[No action was taken on the foregoing resolution.]

LIBELOUS STATEMENTS AND PUBLICATIONS AS TO MEMBERS OF THE HOUSE OF REPRESENTATIVES—CUBAN BOND LOBBY.

FORTY-FIRST CONGRESS, SECOND SESSION, JAMES G. BLAINE, OF MAINE, SPEAKER.

CASE OF W. SCOTT SMITH.

This case is included for the reason that the report of the select committee discusses the question of "the legal rights and liabilities of conductors of the public press" and cites an important decision by the Lord Chief Justice of England in a libel case against the London Times.

On June 10, 1870, Mr. Thomas Fitch, of Nevada, as a question of privilege, submitted the following resolution, viz:

Resolved, That W. Scott Smith, the reporter of the New York Evening Post, be brought to the bar of the House to show cause, if he can, why he should not be expelled from the reporters' gallery for libelous statements reflecting upon the integrity of members of this House.

After debate (Congressional Globe, p. 4315) the resolution was adopted.

Subsequently, on the same day (Globe, p. 4318), the Sergeant-at-Arms appeared at the bar of the House, having in custody the said W. Scott Smith. The following extracts from the Journal show the proceedings had in respect to the case:

"The said Smith having been arraigned,

The Speaker caused to be read to him the said resolution, and the statements upon which the same was based.

And thereupon

The said Smith submitted a statement in writing; which was read to the House.

On motion of Mr. Fitch, the following question was, by unanimous consent, submitted to Mr. Smith, viz:

What official documents do you refer to? By whom were they exhibited to you, and where, and what is their character?

To which question Mr. Smith responded, in writing, as follows, viz:

To the first interrogation, I would state that the official documents alluded to were the sworn affidavits of N. B. Taylor and others before the grand jury of the District of Columbia.

To the second interrogation, I would say that these documents were shown to me confidentially, and that it would be a violation of good faith to make public the source from which these documents were obtained.

The same having been read,

Mr. Cox submitted the following resolution, viz:

Resolved, That all proceedings in the case of Mr. W. Scott Smith pending be suspended, and the party be, and he is hereby, discharged.

Pending which,

Mr. Sargent moved to amend the same by striking out all after the word "Resolved," and inserting in lieu thereof the following, viz:

"That W. Scott Smith, having failed to purge himself of the charge of having slandered a member of this House, and having declined to give the sources of the information upon which he alleges he based his statement, be expelled from the reporters' gallery."

Pending which,

Mr. Farnsworth moved to amend the said amendment by striking out all after the word "that," where it first occurs, and inserting in lieu thereof the following, viz:

"The charge and resolution of expulsion against W. Scott Smith, the prisoner at the bar of this House, be referred to a select committee of five members, to be appointed by the Speaker, who shall have power to send for persons and papers and examine witnesses under oath."

Pending which,

Mr. Davis moved that the whole subject be laid on the table; which motion was disagreed to.

The amendment of Mr. Farnsworth to the amendment of Mr. Sargent, the amendment of Mr. Sargent as amended, and the original amendment as amended were then agreed to.

The Speaker appointed Messrs. Luke P. Poland of Vermont, Oliver P. Dickey of Pennsylvania, Gustavus A. Finkelnburg of Missouri, Clarkson N. Potter of New York, and William S. Holman of Indiana, as the said select committee. On June 22 Mr. Poland submitted the following report, viz:

[House Report No. 104, Forty-first Congress, second session.]

The select committee to whom was referred a resolution offered in the House by Mr. Fitch, of Nevada, in the following words, viz: "*Resolved*, That W. Scott Smith, of the New York Evening Post, be brought to the bar of this House, to show cause, if he can, why he should not be expelled from the reporters' gallery, for libelous statements reflecting upon members of this House," and to whom power was given to send for persons and papers, and to report at any time, now submit the following report:

On the 8th of June, Mr. Fitch, of Nevada, caused to be read in the House an article published in the Evening Star, a newspaper printed in Washington, as follows:

THE CUBAN BOND LOBBY—REMARKABLE DISCLOSURES—IMPORTANT, IF TRUE.

Quite a flurry has been created in various circles in Washington by what purports to be important disclosures published in the New York Post, of yesterday, in regard to the operations of the Cuban bond lobby with members of Congress, newspaper men, etc. The Washington correspondent of the Post says that for several months past reports have been in circulation that the Cuban leaders, in order to secure the recognition of the Cuban republic as a belligerent power by the United States, have expended large sums of money with the lobby and newspaper correspondents here. * * *

It appears that as early as September last, Mr. Ruiz, the financial agent of Cuba, in Washington, entered into a written agreement with N. B. Taylor, an ex-army contractor, through his attorney, ex-rebel Gen. Pickett, of this city, by which, for the sum of \$1,000,000 in Cuban bonds, which were deposited with a certain foreign minister here, Taylor was to obtain the recognition of belligerent rights for Cuba by the Government of the United States. The sum was to be used by Taylor in the best possible manner to accomplish this end within a specified time. * * *

As soon as Congress assembled in December, Mr. Ruiz so far modified his contract with Mr. Taylor as to agree to furnish him with from thirty to forty thousand dollars in money, to be used immediately with the members of Congress.

Mr. Taylor then went to work to induce members of Congress to vote for recognition, if that question should be brought before the House, and to work in a general way for the Cuban republic in all matters which might come up. He saw many members for this purpose, and among others, Golladay, of Kentucky, Butler, of Tennessee, Deweese, of North Carolina, Fitch, of Nevada, and McCormick, of Missouri; but it is not known

positively who accepted bribes and who did not. It is conclusive, however, that bribes were tendered.

Mr. Fitch thereupon stated to the House that, so far as he was concerned, the statements in said article were entirely false; that no offer of any sort had been made to him by N. B. Taylor, or any other person, of money, Cuban bonds, or anything else to induce him to aid the Cuban cause, nor had he accepted or received any such thing.

Mr. Fitch further said that a subcommittee of the Judiciary Committee of the House had been investigating certain charges that members of the House had been improperly influenced by the promise of Cuban bonds, or of money, and he called upon Mr. Butler, of Massachusetts, chairman of such subcommittee, to state whether there was any evidence before that committee tending to implicate him in any such transaction.

Mr. Butler, of Massachusetts, thereupon stated to the House that there was no evidence before the committee tending to implicate the gentleman from Nevada in any improper transaction in regard to Cuba or anything else.

On the next day Mr. McCormick, of Missouri, in his place in the House, made a similar statement to that made by Mr. Fitch in relation to said newspaper article.

On the 10th of June Mr. Fitch of Nevada, caused to be read in the House the following extract from the New York Evening Post of the day before:

"Your correspondent this morning called upon Gen. Butler and asked him whether, in his explanation yesterday in reference to Mr. Fitch, he intended to say that there was no evidence before his committee directly or indirectly implicating Mr. Fitch. Gen. Butler said this was not his meaning, nor could he truthfully say so. There was no direct evidence against Mr. Fitch, but there was indirect testimony."

Mr. Fitch then called upon Mr. Butler, of Massachusetts, to state whether this statement in the New York Evening Post was or was not true.

Mr. Butler then said the statement is not correct; and in the course of the debate which arose, Mr. Butler further stated that there was no evidence before his committee to show that any member of the House had been guilty of any improper conduct in reference to this matter of Cuba.

Mr. Fitch thereupon introduced the resolution above recited to bring W. Scott Smith to the bar of the House, and the same was adopted.

On the same day Mr. Smith was brought to the bar of the House by the Sergeant-at-Arms, and the resolution of the House and both said newspaper articles having been read, the Speaker of the House informed Mr. Smith that he was at liberty to answer.

Mr. Smith thereupon submitted the following answer in writing and asked that the same be read, and stated that he had no further answer to make:

To the Speaker of the House of Representatives:

In regard to my first dispatch which appeared in the New York Evening Post of Monday, June 6, 1870, the statements contained therein were based upon official documents which I saw, and the statements set forth in the dispatch were identical with those contained in said documents; and the names mentioned in the dispatch were the same as those contained in those papers, and used there in the same connection as in said dispatch.

Second. Upon these statements being denied by Mr. Fitch in the House of Representatives, I called upon Gen. B. F. Butler and conversed with him upon the subject, and asked him whether he intended to state in the House, when called upon to do so, that there was no evidence before his committee of investigation directly or indirectly implicating Mr. Fitch.

Gen. Butler said this was not his exact meaning, but that Mr. Fitch's name appeared in the affidavit of Mr. N. B. Taylor as having been approached, and that a copy of this affidavit was among the papers before his investigating committee; but that he did not consider this as directly implicating Mr. Fitch, as it did not appear that he had in any way responded to the approaches alluded to by Mr. Taylor. In reply to a question by me Gen. Butler further said that the names of all the members mentioned in my dispatch appeared in the affidavit of Mr. Taylor as having been approached by him to secure their aid for the Cuban cause.

W. SCOTT SMITH,
Correspondent of New York Evening Post.

This answer having been read, and the matter debated, Mr. Fitch asked leave to put certain interrogatories to Mr. Smith, and by consent of the House they were put. The interrogatories and Mr. Smith's answer thereto were as follows:

"What official documents do you refer to? By whom were they exhibited to you, and where? And what is their character?"

The Clerk read the answers, as follows:

"To the first interrogation, I would state that the official documents alluded to were the sworn affidavits of N. B. Taylor and others before the grand jury of the District of Columbia.

"To the second interrogation, I would say that these documents were shown to me confidentially, and that it would be a violation of good faith to make public the source from which these documents were obtained."

In the course of the discussion Mr. Butler, of Massachusetts, stated that the answer of Mr. Smith truly stated the conversation between Mr. Smith and himself.

After further debate the resolution of Mr. Fitch was ordered to be referred to a select committee. Afterwards, on the same day, a telegraphic dispatch from N. B. Taylor to Mr. Fitch was read in the House, in which Taylor denies that he ever had any conversation with either Messrs. Fitch, McCormick, Butler, or Golladay on the subject of Cuban recognition.

The committee have deemed it proper to state connectedly the whole proceedings in this House on this subject, that the same may be understood fully without reference to the published proceedings on several different days.

The committee gave due notice to Mr. Scott Smith and to Messrs. Fitch, McCormick, and Gen. Butler, members of the House, of their time and place of meeting, and those gentlemen all appeared before the committee, and Mr. Smith was attended by his counsel, Hon. Caleb Cushing.

Mr. Smith submitted an answer in writing which is marked A, and hereto appended.

He also submitted certain papers purporting to be copies of affidavits or depositions, one of N. B. Taylor and two of John T. Deweese. One of the latter purports to be signed by Deweese, and sworn to before a justice of the peace, but the other has no signature or certificate of oath. The same is true of the copy of Taylor's statement or affidavit; it is not signed, and does not appear to have been sworn to. There was no evidence before the committee that there existed any original papers of which these are copies, except what is stated by Mr. Smith in his answer, nor was there any evidence of the reason or occasion for making them, except what Mr. Smith states, that he was informed they were affidavits taken in the preparation of a case to be laid before the grand jury, but the gentlemen who complained of the publication did not controvert those points.

The paper purporting to be a copy of Taylor's affidavit is a lengthy document of some twenty pages. The larger part of it is devoted to a narration of various contracts and arrangements between Mr. Ruiz, financial agent of the republic of Cuba, and himself, in which various other parties mingled for the purpose of procuring from the President and Congress a recognition of belligerency in favor of the republic of Cuba, in consideration of money and large amounts of Cuban bonds.

A lengthy narration is given of unsuccessful maneuvers to procure a proclamation of that character from the President before the present meeting of Congress. So much of his statement as relates to his negotiations and interviews with members of Congress is hereto attached, and marked C.

The papers purporting to be copies of affidavits of Deweese give much the same general history of the character and purpose of contracts for using money and Cuban bonds as that of Taylor, but do not tend to implicate any member of Congress therein except himself, and therefore need not be more particularly referred to.

Mr. Smith then filed an additional statement, which is hereto appended and marked B.

Mr. Fitch and Mr. McCormick, who had complained of the publication in the Evening Post, expressed themselves satisfied with this statement, and stated to the committee that, so far as they were concerned, they did not desire to press the resolution for the expulsion of the reporter. Both those gentlemen, at their request, were sworn, and both testified to substantially the same they had before stated in the House, that they had never had any communication, in any manner, with N. B. Taylor on the subject of Cuban affairs.

The committee have stated thus shortly all that appeared before them. In the judgment of the committee, Mr. Fitch and Mr. McCormick stand completely exonerated from all charge, or suspicion even, of complicity in any of the schemes for sustaining the Cuban cause by the use of improper influences.

In considering the resolution for the expulsion of Mr. Smith from the reporters' gallery, referred to them, the question of the legal rights and liabilities of conductors of the public press comes properly under consideration. The law upon this subject has kept pace with the advance of free principles in other respects. A free press is the life of a free government. The representatives of the people are but their servants and agents, and it is of the highest importance that they have means of information as to the conduct of their representatives upon all matters of public concern.

The public press furnishes the only means of making such information generally known to the people. It should, therefore, be allowed the most unlimited freedom consistent with individual rights and individual reputation. In former times the publication of proceedings of judicial tribunals and parliamentary bodies were not

privileged, if they reflected injuriously upon private character, but the law is now settled that such reports are entirely privileged, provided they are fairly and honestly reported. So all conduct of public men, upon public matters, are fair subjects of discussion and comment in the public press, subject only to the conditions that they are made honestly and upon reasonable grounds of belief in their truth.

In a very recent case against the publisher of the London Times the present lord chief justice of England, in delivering the judgment of the court, used the following language:

"The law of libel has only gradually developed itself into a satisfactory form; for the liberty of a public writer to comment upon conduct and motives of public men has only recently been recognized. Comments on government, on ministers, and officers of state, on members of both Houses of Parliament, on judges, and other public functionaries, are now made every day, which half a century ago would have been the subject of *ex officio* information, and would have brought down fine and imprisonment on publishers and authors. Yet who can doubt that the public are gainers by the change, and that, though injustice may often be done, and though public men may often have to smart under the keen sense of wrong inflicted by hostile criticism, the nation profits by public opinion being thus freely brought to bear on the discharge of public duties."

In applying these now well-established principles to the present case, the question arises, whether the publishers of the Evening Post, or Mr. Smith, the actual writer of these articles, could have legally justified their publication in a suit or a public prosecution for a libel. In the opinion of the committee this would have been subject to great difficulty. The only authority claimed for connecting the names of Mr. Fitch and Mr. McCormick with any of these disreputable transactions is what is contained in the paper assumed to be a copy of Taylor's affidavit, not verified by any signature or evidence that it was sworn to. In making a defense at law a party would be required to furnish better authority upon which to found a reasonable belief.

Your committee, however, are of the opinion that a rule somewhat less strict should be applied in this case than in an action or prosecution for libel.

Mr. Smith says that he supposed and believed that the statement of Taylor was duly signed and sworn to at the time he made his communication to the Post. It is to be observed that the statement commences with the ordinary legal formula of a deposition or affidavit, and might naturally enough have led an unprofessional man, like Mr. Smith, to suppose that it was a duly sworn statement. Had the correspondent been a lawyer he would also have known that affidavits could not legally have been used in evidence before a grand jury, and that therefore the paper was not evidence taken in the due course of any legal or judicial proceeding. His failure to ascertain whether the paper was duly authenticated, and what its true legal character was, can be excused only on the ground of his want of knowledge that is in some degree professional.

Your committee are satisfied that Mr. Smith had no wanton or malicious purpose to defame or malign either of the gentlemen named.

His fault was in not exercising sufficient caution in relation to the authority upon which he made his statements, and his failure in this respect is to be attributed to that somewhat excessive anxiety and rivalry among correspondents to provide for their respective employers earlier and more startling news than any other.

It is further to be observed that the statements in the principal article in the Evening Post assume as true what is not alleged in Taylor's affidavit, even if that was properly authenticated. The article in the Post says: "It is not positively known who accepted bribes, and who did not." This is a clear assumption that some of the gentlemen named had accepted bribes. The most that can be made of Taylor's statement is, that propositions or offers had been made to members, and not that any had been accepted. The assumption was clearly unjustifiable.

While the committee consider that the correspondent of the Evening Post has not been without fault, they are also of opinion that his fault is not of such flagrant character as to justify his expulsion from the gallery, or even to warrant any formal resolution of censure.

They therefore recommend that the resolution referred to them be laid on the table.

A.

WASHINGTON, D. C., June 16, 1870.

SIR: I appear before the committee in obedience to its summons in order to answer to the resolution of the 10th instant, and show cause why sentence of expulsion from the reporters' gallery should not be pronounced against me for alleged libelous statements reflecting upon the integrity of members of the House of Representatives,

contained in a dispatch to the New York Evening Post published on the 6th instant, and coming from me, as its regular correspondent in the city of Washington.

I wrote the dispatch in question in the discharge of my regular duty as correspondent of the New York Evening Post, and in the single purpose of communicating in good faith interesting or important intelligence, without any libelous purpose or intention, and without malice toward any member of the House. My action in the premises has been fully approved by the conductors of the Evening Post.

I did not pretend to make any statements of my own knowledge, but only to give extracts from documents before me, purporting to be declarations and affidavits of various persons concerning transactions professedly within their own knowledge.

These persons alleged that two contracts had been made by members of the Cuban junta, or agents of theirs, to provide bonds of the so-called Cuban republic to a large amount, to be used in securing action by the President or the Congress of the United States in favor of the insurgents in Cuba.

One of the contracts purported to be made with Dr. D. W. Bliss, and the other with the attorney of Mr. N. B. Taylor. Taylor's declaration sets forth, among other particulars, that, in the execution of his contract he held personal interviews with various members of Congress to induce them to vote in favor of the belligerency of the republic of Cuba, some of whom he mentioned by name.

My dispatch to the Evening Post merely contains an abridgement of the statements by N. B. Taylor. I did not impute corruption to any of the members of the House. I did not even assert that Taylor approached any member. I only wrote that he said he did. The committee will pass their own judgment on the statements of Taylor, so far as they affect any particular member of the House. For myself, I disavow all intention or purpose, then or now, of vouching for the truthfulness of the general statements of Taylor, or of his special reference to members of the House, any more than I should vouch for the truth of the statements of witnesses in reporting their testimony taken on a trial in a court of justice, or before a committee, or that of statements made in the halls of Congress in reporting its debates.

I respectfully submit that the practice on the part of members of Congress of permitting access to them by persons of the class of N. B. Taylor, belonging to the so-called lobby, serves to explain and to justify my actions.

Knowing, as I did, how many of such persons, and with what facility, are suffered to solicit members in behalf of pending legislative measures, and how many of such persons, some of them in official positions connected with either House, enter into contingent contracts based on their real, or more often pretended, influence with individual members, it did not occur to me to doubt the truth of Taylor's statement in this respect, or to hesitate to communicate it to the Post; more especially, in view of other testimony as to the bond contracts of the Cuban junta.

If Taylor had asserted that the members approached by him received bonds, the subject would have assumed an aspect of gravity dictating reserve on my part. I simply arrived at the conclusion, and so stated, that he *professed* to have seen members in execution of his contract with Mr. Ruiz. The tenor of the documents was to show corrupt intentions on the part of these lobby agents and their employers, not corrupt acts on the part of members of Congress. If here, as in England, there was a body of parliamentary solicitors, duly licensed and subject to proper regulations, operations such as Taylor professes to have engaged in could not occur. But in the present state of things, irresponsible persons, with corrupt thoughts in their minds, may approach the most experienced and dignified members of either House, or, at least, pretend that they have done so, whether in order to obtain money from their employers or from the adversaries of their employers.

It is perfectly in the power of Congress to put a stop to all such corrupt acts or pretenses. But meanwhile correspondents for the press have to deal with facts as they are; and in such a state of facts, I submit that a correspondent of the press is not subject to censure, when with honorable motives and in good faith he assumes as probable or possible, and so reports the statements of a lobby agent that he has spoken to members of Congress. That such agent has done this, or pretends to have done it, neither imputes nor implies anything wrongful on the part of such members. And, of course, the correspondent, in reporting such statements, is not, either in act or intention, guilty of libel on any member or of disrespect to the House.

I respectfully submit, also, that in the present instance honorable members have unnecessarily, and without good cause, assumed that it is libelous on the part of a newspaper to print that a lobby agent spoke to a member or members of Congress. To make this assumption implies that a criminal or dishonorable act is performed every time a member receives the visit or listens to the solicitations of any one of the lobby agents about the Capitol. Surely, such a position can not be maintained; but it is necessary that it should be, in order to conclude that the publication contained in the Evening Post is a libel. In a word, to say that a lobby agent spoke to

a member with or without good purposes can not be deemed, on the words of the order of the House, a libelous statement reflecting on the integrity of members of the House of Representatives.

It is not a libel; it does not reflect on their integrity. Or if to be spoken to by a lobby agent necessarily implies corruption, then it behooves Congress to provide, by proper legislation, for the punishment of any lobby agent who speaks to a member, and of any member who listens to one. Meanwhile to assume that members may receive a lobby agent, but that it is libelous to say that he has done so, is to imply that all such interviews are clandestine in their nature, which is a proposition not to be entertained in the present state of the law.

To substantiate my own good faith in this matter, a copy of Taylor's declaration, taken from the document seen by me, is herewith submitted to the committee.

I refer, in corroboration of my statement of the authenticity of this document, and of the other documents seen by me, to the testimony and documents before the Committee on the Judiciary, and which I request this committee to call for, if they deem it important to the question of my own good faith and purpose in this matter.

I declined, before the House, to disclose the name of the person in whose hands I saw these documents; not in any disposition of disrespect toward the House, but in obedience to the instructions of the conductors of the Evening Post, and to my own sense of honor and of duty toward the press.

In this relation, the attention of the committee is respectfully called to the fact that the resolution of the House does not call me to its bar for refusing to disclose the source of my information, nor does it call on me to show cause on such refusal. I am to show cause against an imputed libelous statement made by me. To disclose the name of my informant would not remove from me the imputed fault; and would subject me to the greater one of dishonorable conduct, and of the forfeiture of my obligations of honor to him and to the press.

I humbly conceive that the committee would not subject a correspondent for the press to the alternative of dishonor and complicated breach of trust, even if the question were within the scope of the order of the House.

At the same time it is proper and due to justice to say, and it may be satisfactory to the members of the House to know, that the documents in question were not shown to me by any official person, neither of the United States nor of Spain, but by a private individual, whose name is no importance to the action of the House. The author of the statement complained of, and the person properly responsible therefor, is N. B. Taylor.

In conclusion, I insist that the publication in question was in good faith and for commendable purposes; that I have not made any libelous statement nor reflected on the integrity of any member of the House of Representatives; and that therefore no cause exists for my expulsion from the reporters' gallery, or for subjecting me to any censure on the part of the House.

All of which is respectfully submitted.

W. SCOTT SMITH,
Washington Correspondent New York Evening Post.

HON. LUKE P. POLAND,
Chairman Select Committee of Investigation.

B.

The documents seen by me, and on which the dispatch to the Evening Post was framed, consisted, as I was informed, of affidavits taken in the preparation of a case which was intended to be and was laid before the grand jury. Several of them were in fact sworn to; and while writing my dispatch, and until making examination for the informatton of the committee, I had presumed that all were sworn to, including the declaration of N. B. Taylor, which is headed as if sworn. It appears, however, that his oath is not annexed to the particular paper which I saw; but I am informed that a sworn copy exists.

I add, as already stated in my answer, that I took the names of Mr. Fitch and Mr. McCormick from the declaration of Taylor, and am not aware that their names appear in any other of the documents used by me in making up my dispatch to the Evening Post.

I am advised by my counsel that it is not material to my justification to go into other documents, or to repeat their contents, including names of other gentlemen, but I am personally ready to do so if required by the committee.

W. SCOTT SMITH.

I believe that Mr. Ruiz arrived at Washington on the Saturday after the said cabinet meeting, for the Sunday immediately before the meeting of Congress, Col. Pickett came to me and told me that Mr. Ruiz had extended the time of the performance of our contract till, as I remember now, about the 1st of March. He also told me that the bonds were still in the hands of the Peruvian minister, and would remain there, and that, in addition to these bonds, Mr. Ruiz would pay us from thirty to forty thousand dollars in money, to be used immediately on members of Congress.

After that I went to work to induce members of Congress to vote in favor of the recognition of the belligerency of the republic of Cuba, if the question should be brought before the Congress, and to induce them to vote in favor of the republic of Cuba, in all matters that should come before Congress. I then saw Mr. Deweese, of North Carolina; Mr. Butler, of Tennessee; Mr. Golladay, of Kentucky; Mr. McCormick, of Missouri; Mr. Fitch, of Nevada; seeking to influence all personally, and seeking through some to influence others.

I told them all, in effect, that if they would vote in favor of the recognition of the belligerent rights of the republic of Cuba, if such a measure should be brought before Congress, and if they would vote for the interest of the republic of Cuba whenever they had an opportunity, that I would give them a certain amount of the bonds of the republic of Cuba, if the belligerency of the republic of Cuba should be recognized, and to some of them I promised that I would give money in addition. I told them that I had a contract with Mr. Ruiz in the matter, and that Mr. Ruiz was the financial agent of the republic of Cuba here, and that the bonds were put up under the contract, and that all would be right, and that they would get their share. About the 20th of December, 1869, finding that my attorney, Col. Pickett, though continually saying that Mr. Ruiz promised him the money, but that he, Col. Pickett, was, nevertheless, unable to get any, I went to Mr. Ruiz myself, and saw him one day at the Ebbitt House, just as he was coming from his breakfast. He invited me to his room, and, upon telling him my name, he recognized me as the party with whom he had had the contract already herein referred to. I told him in substance that I was desirous of seeing him personally, to see why the money was not paid over by him to aid me in obtaining the votes of members of Congress in favor of the recognition of the belligerent rights of the republic of Cuba. He said that he was glad to see me in person, and preferred to manage the matter directly with me, and besides, he promised me that a new arrangement should be entered into at once between him and me, in which he would agree to furnish both bonds and money to me, to be used by me for the purpose of inducing members of Congress to vote for the recognition of the belligerent rights of the republic of Cuba. He told me that he had determined that he must use both bonds and money to influence the votes of members, and told me to go right to work upon them as I had been doing. I saw Mr. Ruiz, on an average, at least once a day for the next three or four weeks. He continually promised to furnish me with Cuban bonds and with money, and promised me that he would have them on the next day, or in a few days, and so on. At one time I heard that Mr. Lemus, the minister of the republic of Cuba to the United States, had put up \$2,000,000 of bonds of the republic of Cuba, to be paid to Dr. Bliss, of the city of Washington, if he could obtain the recognition of the belligerent rights of the republic of Cuba by the United States, and fearing that Mr. Ruiz was not acting fairly with me, I went to Mr. Ruiz, and told him what I had heard, and asked him if it was true. He told me that he had heard such a story but that it was not true, and that no bonds had been put up in such a case for Dr. Bliss, and that Mr. Lemus had gone to New York and would not be back again. I particularly remember on one occasion when I called, he (Mr. Ruiz) told me that he was going up to see Secretary Fish, and when I called again, in the evening, he told me that he had seen Mr. Fish, and that it was of no use to see Mr. Fish any further in the matter, and he told me that he (Ruiz) was determined to use bonds and money to influence the votes of members of Congress, and that I should go right at it again.

During all these days I was at work endeavoring to influence the votes of the members of Congress in favor of the republic of Cuba. Mr. Ruiz told me that after I got to work, he wanted me to bring members of Congress to see him, or else to take him to them, and that I should have the members of Congress understand distinctly that he (the member of Congress) should not speak to Mr. Ruiz about receiving Cuban bonds or money for his vote, but that when Mr. Ruiz and the member of Congress met, that he (Mr. Ruiz) would talk to him about Cuban affairs, and post him up as to the facts. I kept at work but did not bring any member of Congress to see him. Finally, about the last week in January, but I do not exactly remember the exact time, finding that Mr. Ruiz neither furnished me with any bonds or money, though he had often promised me to do so, I wrote a letter to him, saying that I declined having anything further to do in the matter, as he did not furnish me with bonds or money.

**CREDIT MOBILIER—ALLEGED BRIBERY OF MEMBERS OF THE
HOUSE OF REPRESENTATIVES—EVIDENCE AFFECTING SENATORS
TRANSMITTED TO THE SENATE.**

FORTY-SECOND CONGRESS, THIRD SESSION, JAMES G. BLAINE, OF MAINE, SPEAKER.

CASES OF REPRESENTATIVES OAKES AMES, OF MASSACHUSETTS, AND JAMES BROOKS, OF NEW YORK, AND SENATOR JAMES W. PATTERSON, OF NEW HAMPSHIRE.

This case—the most notable of all the investigations made by committees of either House of Congress—is included on account of the interesting questions arising therein and important decisions made thereon. It is the only case in which charges affecting the official integrity of the Vice-President of the United States, the Speaker of the House of Representatives, members of both Houses of Congress, and a Secretary of the Treasury, were ever investigated by one committee.

The action of the House of Representatives on January 6, 1873, directing the select committee appointed under the resolution of December 2, 1872, to investigate the charges of corruption in the matter of stock in the Credit Mobilier, “to continue such investigation without secrecy as to either their past or future proceedings, and that the testimony hitherto taken be made public,” was not only a reversal of the unbroken practice in respect to Congressional investigations since the formation of the Government, but a departure from the settled and established principles of the common parliamentary law of England, as well as this country, in regard to the ordinary proceedings of legislative committees.

The debate had on the point of order against the resolution submitted by Mr. Frye, and the ruling of Speaker Blaine, established this fact, and that the action then taken was due almost wholly to the excitement or feeling existing throughout the country on account of the prominent officials involved. A statement of John B. Alley, an ex-member of the House of Representatives, and a witness before said committee, in the form of a petition to the House, asserted that he had been threatened with personal violence on account of a publication in the New York Sun, purporting to give his testimony before said committee, in full, with his cross-examination, together with the “purposely distorted reports of testimony given before said committee,” undoubtedly led to this action of the House, which was without precedent, and has not since been followed in either House of Congress. (See Globe of December 2, 1872, p. 11, and of January 6, 1873, pp. 353, 354, 355, 356 357.)

MONDAY, DECEMBER 2, 1872.

* * * * *

(House Journal, third session Forty-second Congress, p. 2, see Congressional Record above date, p. 11.)

Mr. Blaine, by unanimous consent (Mr. S. S. Cox occupying the chair), submitted the following preamble and resolutions, viz:

Whereas accusations have been made in the public press, founded on the alleged letters of Oakes Ames, a Representative from Massachusetts, and upon the alleged affidavit of Henry C. McCombs, a citizen of Wilmington, in the State of Delaware, to the effect that members of this House were bribed by Oakes Ames to perform certain legislative acts for the benefit of the Union Pacific Railway Company by presents of stock in the Credit Mobilier of America, or by presents of a valuable character derived therefrom: Therefore,

Resolved, That a special committee of five members be appointed by the Speaker *pro tempore*, whose duty it shall be to investigate and ascertain whether any member of this House was bribed by Oakes Ames, or any other person or corporation, in any manner touching his legislative duty.

[The words italicized were inserted at the suggestion of Mr. Benjamin F. Butler.]

The preamble and resolutions after debate (Globe, p. 11) were adopted, and the Speaker *pro tempore* appointed Messrs. Luke P. Poland of Vermont, Nathaniel P. Banks of Massachusetts, James B. Beck of Kentucky, William E. Niblock of Indiana, and George W. McCrary of Iowa, members of the said committee. Subsequently Mr. Beck was excused from service thereon and the Speaker *pro tempore* appointed Mr. William M. Merrick to fill the vacancy. On January 6, 1872, on motion of Mr. Jeremiah M. Wilson of Indiana, another select committee of five members was created to inquire whether or not any person connected with the Credit Mobilier holds bonds of the Union Pacific Railroad Company for the payment of which, or the interest thereon, the United States is liable. On January 9 said committee (consisting of Mr. Wilson, Samuel Shellabarger of Ohio, George F. Hoar of Massachusetts, Thomas Swann of Maryland, and Henry W. Slocum of New York) was instructed to make inquiries whether any persons or corporations had received moneys, bonds or other property, from the Union Pacific Railroad, or its officers, or otherwise, which ought in law to be accounted for to said company or applied to the reimbursement of the United States for any claim against said company. On January 15 said committee was further instructed, on motion of Mr. John F. Farnsworth of Illinois, to inquire relative to payments of members of Congress as attorneys for the Credit Mobilier or the Union Pacific Railroad Company. On January 23 the first named (Poland) select committee was instructed to inquire whether any members of the House were interested in the Dubuque and Sioux City Railroad, and, if so, how; and on February 6, on motion of Mr. Shellabarger, the second (Wilson) select committee was authorized to consider the testimony taken by the first named (Poland) select committee, in so far as such evidence may be competent and necessary for the purposes for which said first-named (Wilson) select committee was appointed.

On February 18, Mr. Poland, from the first-named committee, submitted a report, accompanied by two resolutions, expelling Oakes Ames, of Massachusetts, and James Brooks, of New York, from their seats as members of the House of Representatives (Report No. 77), and on February 20 and March 3, 1873, Mr. Wilson, from the second-named committee, submitted reports (Nos. 78 and 95).

The Poland report was considered February 25, 26, 27, and the resolutions amended by the adoption of a substitute "condemning the conduct of the said Ames and Brooks, etc.," rejecting a preamble declaring that "grave doubts exist as to the rightful exercise by this House of its power to expel a member for offenses committed by such member long before his election thereto and not connected with such elections."

[See in this connection House Report No. 179, first session Thirty-fifth Congress, in the case of O. B. Matteson, of New York, and House Report No. 815, first session Forty-fourth Congress, in the cases of William S. King and John G. Schumaker, p. —, of this compilation.]

On February 4, Mr. Poland submitted the following preamble and resolution which were agreed to, viz:

Whereas the evidence taken by the select committee of the House appointed December 2, 1872, for the purpose of examining into charges of bribery of members of the House contains matter affecting members of the Senate: Therefore,

Resolved, That the Clerk of the House be directed to transmit to the Senate a copy of all evidence thus far reported to the House by said committee, together with a copy of that resolution.

A copy of said report and evidence was forthwith transmitted to the Senate. On the same day, on motion of Senator James W. Patterson, of New Hampshire, a select committee of five Senators was authorized and appointed (consisting of Senators Lot M. Morrill of Maine, John Scott of Pennsylvania, George G. Wright of Iowa, John P. Stockton of New Jersey, and John W. Stevenson of Kentucky), to which was referred said message of the House of Representatives. On February 27, Mr. Morrill, from said committee, made a report (No. 519), accompanied by a resolution that James W. Patterson be expelled from his seat as a member of the Senate, which report was not acted on during said session. At the next special session of the Senate the following preamble and resolution, submitted by Senator Henry B. Anthony, were agreed to:

Whereas at the last session of the Senate a resolution was reported from the select committee on evidence affecting certain members of the Senate "that James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate;" and whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore,

Resolved, That the pamphlet entitled "Observations on the report of the Committee of the Senate of the United States respecting the Credit Mobilier of America," submitted by Mr. Patterson, be received, filed, and printed with the report of said committee.

PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—CONTUMACIOUS WITNESS—WRIT OF HABEAS CORPUS.

FORTY-THIRD CONGRESS, SECOND SESSION, JAMES G. BLAINE, OF MAINE, SPEAKER.

CASE OF RICHARD B. IRWIN.

This case is included for the reason, that in addition to the feature of a contumacious witness, the House was called upon to consider the matter of a writ of habeas corpus obtained in behalf of Richard B. Irwin, the aforesaid contumacious witness, and also by reason of the adoption of a resolution directing the Clerk of the House to lay before the *next* House of Representatives a copy of the testimony taken before the Committee on Ways and Means upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service, to the end that said Congress might take due action upon the questions affecting William S. King and John G. Schumaker (members elect to said House), and further proceed as they shall deem just, and also directing the Clerk to transmit a copy of said evidence to the U. S. district attorney for the District of Columbia, with *directions* to lay so much of the same as relates to the truth of the testimony given by said King and Schumaker before the grand jury for such action as the law seems to require.

FRIDAY, DECEMBER 11, 1874.

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Mr. Henry L. Dawes, of Massachusetts, as a question of privilege, from the Committee on Ways and Means, reported a preamble and resolution, the preamble reciting that Richard B. Irwin was, on the 10th day of September, 1874, duly summoned to appear and testify before the said committee, which was charged with the investigation of certain allegations against the Pacific Mail Steamship Company, and had, without sufficient cause, neglected to appear before said committee pursuant to said summons, and the resolution directing the Speaker—

To issue his warrant commanding the Sergeant-at-Arms to take into custody the body of the said Richard B. Irwin, wherever to be found, and to have the same brought forthwith before the bar of the House to answer for contempt of the authority of the House in thus failing and neglecting to appear before said committee.

The words "without sufficient cause" in the resolution after debate were then stricken out (Record, p. 62) and the preamble and resolution agreed to.

On December 21, Mr. Dawes, from the same committee, reported a resolution discharging the said Irwin from the custody of the Sergeant-at-Arms, he "having given satisfactory reasons for having neglected to appear before the Committee on Ways and Means," which resolution was agreed to.

Subsequently (on the same day) Mr. Dawes, from the same committee, submitted a report in which was included certain evidence given by the said Irwin before the said committee, in the course of which he refused to answer certain questions propounded by the committee, the report concluding with the statement—

That it is necessary for the efficient prosecution of the inquiry ordered by the House that said questions should be answered, and that there is no sufficient reason why the witness should not answer the same, and that his refusal is in contempt of the House.

Mr. Dawes reported a resolution similar to the one previously adopted directing the Speaker to issue his warrant, etc., which after debate (Record, p. 175 to 182) was adopted.

The discussion, which was somewhat extended, was participated in by Dawes, Horace Maynard, John A. Kasson, James B. Beck, Eugene Hale, Alexander H. Stephens, Benjamin F. Butler, William Lawrence, Luke P. Poland, and others, and was directed largely to an examination of the constitutional and legal powers of the House of Representatives over and in respect to witnesses before its committees and the presentation of authorities and precedents.

On January 6, 1875, Mr. Irwin was arraigned at the bar of the House, interrogated by the Speaker, and made answer (Record, p. 291); after which the House adopted a resolution submitted by Mr. Dawes declaring that the said Irwin "has failed to show sufficient cause why he should not answer the questions propounded to him," and that he "be considered in contempt of the House for failure to make answer thereto."

Mr. Ellis H. Roberts, from the Committee on Ways and Means, reported a resolution, which was agreed to, directing that the said Irwin be remanded to the custody of the Sergeant-at-Arms to abide the further order of the House, and to be taken before the Committee on Ways and Means if he shall declare himself ready to answer such questions as may be lawfully put to him, including those asked of him by order of the House, "and while he shall so remain in custody the Sergeant-at-Arms shall keep the witness in his custody in the common jail of the District of Columbia."

On January 8 Mr. Dawes presented a letter from W. P. Johnston, M. D., and Alexander Y. P. Garnett, M. D., physicians in attendance upon Richard B. Irwin, representing that his confinement in the common jail of the District of Columbia would be attended with results pernicious to his health, which, after debate, was referred to the Committee on Ways and Means. Mr. Benjamin F. Butler submitted a resolution "that pending the examination and report of the Committee on Ways and Means upon the said subject, the Sergeant-at-Arms be, and he is hereby, instructed to retain said Irwin in his own custody, and not in the common jail," which resolution was rejected by yeas 34, nays 161. (See Record, pp. 344, 345.)

THURSDAY, JANUARY 14, 1875.

* * * * *

The Speaker laid before the House the following letter from the Sergeant-at-Arms:

HOUSE OF REPRESENTATIVES,
Washington, D. C., January 14, 1875.

SIR: I respectfully report to you, and through you to the House of Representatives, that on the 9th day of January, 1875, a writ of habeas corpus was served upon me, directing me to produce the body of Richard B. Irwin, detained in my custody, before Arthur MacArthur, one of the judges of the supreme court of the District of Columbia, on the 12th day of said January; that thereafter, on the 12th day of January

aforesaid, the time for producing the body of said Irwin was further extended to January 14, at 11 o'clock a. m., at which time I appeared before the said Judge MacArthur and presented through my attorney, Hon. Samuel Shellabarger, the warrant and resolutions of the House of Representatives upon which said Irwin was held in my custody. Whereupon Judge MacArthur decided that no return would be received by him until the body of said Irwin was produced in court.

Inasmuch, therefore, as the production of the said Richard B. Irwin by me would release him from my custody as an officer of the House of Representatives, and place him in the custody of the court, I asked for delay until to-morrow, January 15, at 11 o'clock a. m., to obtain further instructions from the House of Representatives.

All of which is respectfully submitted.

Very respectfully, your obedient servant,

N. G. ORDWAY,

Sergeant-at-Arms, House of Representatives United States.

Hon. JAMES G. BLAINE,

Speaker House of Representatives.

The same having been read, Mr. Dawes submitted a resolution; which, at the suggestion of Mr. Joseph R. Hawley, was modified to read as follows, viz:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of habeas corpus in the case of Richard B. Irwin that the prisoner is duly held by authority of the House of Representatives to answer any proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of the said Irwin before said court when making such return, and retain said Irwin, and continue to hold him subject to the further order of this House.

The House having proceeded to its consideration, Mr. George F. Hoar moved to amend by striking out all after the "contempt." Pending which, Mr. Robert S. Hale submitted the following amendment in the nature of a substitute, viz:

Resolved, That the communication of the Sergeant-at-Arms and the subject-matter thereof be referred to the Committee on the Judiciary, with instructions to report thereon with all practicable dispatch; and that the Sergeant-at-Arms be instructed not to produce the body of Richard B. Irwin before any court, officer, or tribunal till the further order of the House.

Pending which, Mr. Tremain submitted the following amendment to the amendment in the nature of a substitute, viz:

Resolved, That the Sergeant-at-Arms be instructed to make return to the writ of habeas corpus showing in proper form that he holds the prisoner in custody under the order of this House adjudging him guilty of contempt; and that he be further instructed not to bring the body of the prisoner before the court until otherwise ordered by this House.

After debate, Mr. Eldredge moved that the whole subject be laid upon the table; which motion was disagreed to.

The question recurred upon the amendment submitted by Mr. George F. Hoar; which was agreed to.

The question then recurring upon the amendment submitted by Mr. Tremain, and being put it was disagreed to.

The question then recurring on the amendment submitted by Mr. Robert S. Hale, and being put it was disagreed to.

The question then recurring on the resolution, and being put it was agreed to.

FRIDAY, JANUARY 15, 1875.

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Mr. John A. Kasson, from the Committee on Ways and Means, as a question of privilege, submitted the following, viz:

In the matter of the proceedings against the Sergeant-at-Arms of this House for the production of the body of Richard B. Irwin, held in his custody for contempt of the House of Representatives,

Ordered, That the Sergeant-at-Arms, with the aid of counsel, make known to the judge issuing the writ of habeas corpus requiring the body of Richard B. Irwin to be brought before the said judge, that he, the said Sergeant-at-Arms, has said Irwin in his custody pursuant to an order of this House, upon its judgment that the said Irwin was in contempt of the House of Representatives, and for no other reason; that the House of Representatives requires of him to retain the body of said Irwin in his custody until the said Irwin shall offer to purge himself of said contempt, as provided by the order of this House, and that he respectfully inform the judge that, as an officer of this House, he can not disobey the orders thereof in this respect by releasing in any way or transferring said Irwin from his custody; and further,

Ordered, That he exhibit to the said judge a copy of the order of this House, duly certified by the Clerk, adjudging the said Irwin in contempt, and the warrant of the Speaker in execution thereof, together with a copy of this order.

After debate, Mr. Dawes moved the previous question, and the House refused to second the same.

After further debate, Mr. John Cessna submitted the following amendment, viz:

Strike out all after "Sergeant-at-Arms" and insert "be directed to produce the body of the prisoner before the court as commanded by its order, and to obey its judgment in the premises."

Pending which, after further debate,

Mr. James B. Beck submitted the following amendment, in the nature of a substitute, viz:

Strike out all of the said proposition and insert:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of habeas corpus in the case of Richard B. Irwin that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of the said Irwin before said court when making such return as required by law.

After further debate, Mr. Cessna withdrew his amendment.

The question then recurred on the amendment of Mr. Beck, pending which,

Mr. Cessna submitted the following amendment to the same, viz:

Add thereto: "And that he be further directed to obey the order of said court in the premises."

Pending which, Mr. Kasson, having modified his original proposition as follows, viz, insert after the words "that the said Irwin is in contempt of the House of Representatives in refusing to give testimony as a witness," the words, "and is detained pending such examination."

The Speaker stated the question to be first on the amendment to the amendment submitted by Mr. Cessna;

And being put, it was decided in the negative.

The question then recurred on the amendment submitted by Mr. Beck,

And being put, it was decided in the affirmative—yeas 107, nays 64, not voting 117.

So the amendment was agreed to.

The original proposition of Mr. Kasson, as amended, was also agreed to.

THURSDAY, JANUARY 20, 1875.

* * * * *

Mr. Dawes, as a question of privilege, presented a letter from Richard B. Irwin, now in the custody of the Sergeant-at-Arms, stating his readiness to answer the questions propounded to him at the bar of the House on the 6th instant, and asking that he may be no longer confined in the common jail of the District of Columbia; which was read and ordered to be laid upon the table.

Subsequently Mr. Dawes, from the Committee on Ways and Means, reported, as a question of privilege, the following preamble and resolution; which were read, considered, and agreed to, viz:

Whereas on the 6th instant Richard B. Irwin was adjudged to be in contempt of this House for refusing to answer a certain question or questions propounded to him at the bar of the House and by the Committee on Ways and Means; and whereas the House did thereupon order the commitment of said Irwin to the custody of the Sergeant-at-Arms in the common jail of the District of Columbia, to abide the further order of this House; and whereas the said Irwin has this day stated in writing to the Speaker that he is ready to answer the question or questions which he has heretofore refused to answer, and others that may be lawfully put to him: Therefore,

Resolved, That so much of the resolution of January 6 as requires the Sergeant-at-Arms to keep the said Irwin in the District jail be, and the same is hereby, rescinded, and that upon answering the said question or questions the said Irwin shall be discharged from the custody of the Sergeant-at-Arms.

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MONDAY, JANUARY 25, 1875.

(Journal 2, 43, p. 246.)

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On motion of Mr. Dawes, as a question of privilege,

Ordered, That Richard B. Irwin be discharged from custody.

On motion of Mr. Dawes, by unanimous consent,

Ordered, That the judicial proceedings in the case of Richard B. Irwin be printed in the Congressional Record.

[The same were so printed, and will be found there in proceedings of January 25, commencing on page 707.]

From the foregoing publication it appears that the case came before Justice McArthur, of the supreme court of the District of Columbia at chambers, on January 14, 1875; that Messrs. T. J. Durant, J. W. Moore, and C. P. Culver appeared as counsel for the petitioner (Irwin) and Messrs. Samuel Shellabarger and George P. Fisher for the respondent, N. G. Ordway, Sergeant-at-Arms of the House of Representatives; that the arguments and proceedings continued for four days, and that on January 18 Justice McArthur announced his decision dismissing the writ and remanding the prisoner (Irwin) to the custody of the Sergeant-at-Arms of the House of Representatives. The argument of Mr. Durant on behalf of Mr. Irwin is too voluminous to be reproduced, but that of Mr. Shellabarger on behalf of the respondent (Sergeant-at-Arms Ordway) presents such a complete and exhaustive array of authorities in respect to the powers and privileges of the House of Representatives as to a contumacious witness that it is given in full, following the decision of Justice McArthur.

RULING OF THE COURT.

Mr. Shellabarger arising to address the court on behalf of the respondent—

The COURT. "Before you proceed, Mr. Shellabarger, I desire to make some suggestions, which may, perhaps, abridge the argument, if not dispense with it. My solicitude in the case has been to preserve, in its full integrity and force, the trial by habeas corpus; because, next to the jury trial, I regard it as one of the most invaluable privileges and rights belonging to our system of government. I have, therefore, listened with disfavor to a motion to quash the writ in this case. The petition upon which the writ is founded was presented by counsel whose position at the bar entitle them to a most respectful considera-

tion, and I could scarcely indulge the idea that a frivolous or improvident application would come from such a source, and after some considerable reflection upon the subject I concluded to grant the writ. When the writ of habeas corpus is allowed, the subsequent proceedings are regulated by absolute statute law. The officer to whom it is directed is required to make return to the writ and to bring along with his return the body of the person in custody before the officer who issued the writ. The relator is then secured the right by express provision of the statute of denying the facts stated in that return and of introducing new facts upon the record that may be material in the case. The further direction of the law is that the judge shall then hear the case in a summary manner. These are all directions in the law, which, in my opinion, do not rest in the discretion of the court to execute or disregard, and which the officer issuing this writ has no option but to observe; and in all the proceedings which have taken place up to this point I may safely say that there have been no deviations from the requirements of the statute in this respect.

“Since the return came in, and since no fact in that return was denied, it was quite evident to my own mind what the final result of this case must be. I did not feel at liberty, however, at that particular point in the case, to act upon my own convictions, however clear they might have been, because I still regard it as the right secured by the law to the party to deny those facts and to introduce other facts which might still entitle him to the remedy which he sought. And I therefore say that no judge, in advance, has any right to say to any man seeking this invaluable remedy that he shall not have it, because it has been denied that he has such right by the officer holding him in custody. I have listened to the discussion of the power of the House to commit for contempt this morning, and the effect of the statute of 1857 upon that power.

“There can be no doubt that either House of Congress has the right of committing for contempts—all contempts which infringe upon the order, the dignity, or the purity of their legislation, and for this purpose it is not denied but that they have the power of examination, of investigation, and of calling witnesses into their presence or before their committees, and of administering oaths and putting inquiries and of punishing a refusal to answer. These powers of the House are so very clearly established now, that the learned counsel has not impeached them, unless Congress, by the enactment of 1857, has abrogated this almost indispensable power in Congress. It is to be observed that the statute applies only to a particular species of contempt, and that is to witnesses who refuse to answer questions upon subjects of investigation before Congress or before its committees.

“It is said, inasmuch as Congress has created the act of a witness refusing to answer a misdemeanor, they have abolished it as to contempt. I can not so regard it. It appears to me that the punishment provided in the statute for this as an offense does not merge the contempt and does not abolish the power of the House. It has not been so understood from the time of the enactment of the statute; and I believe this is the first time that that aspect of the case has ever been presented for judicial examination. There is nothing clearer than that the same act may be both a misdemeanor and a contempt. If one member should strike another while the House was in session and in its presence, it would be a contempt of the House and a misdemeanor under the laws, for which he could be punished. It would be no

answer to the proceedings in the House for contempt to say that he was liable under the general law of the land to be punished for the misdemeanor.

“In the celebrated case of Sam Houston, who was brought before the bar of the House for contempt in striking a member of Congress for words spoken in debate, the power of the House to punish him was disputed; but it was held to be within the power of the House upon the most solemn consideration. And, after having been tried and convicted and punished for contempt of the House, he was prosecuted for misdemeanor, probably in this very court, or, at all events, in one of our local tribunals here. His defense to that action was his conviction before the House for the contempt, and that he could not twice be punished for the same offense. This, of course, was overruled, and Mr. Houston, notwithstanding his distinguished position, having formerly himself been a member of the House, was punished both for contempt and for a misdemeanor before the two jurisdictions.

“The power of the House to punish for a contempt extends only to confinement, and terminates with the session of Congress. If the party were found guilty of a contempt but twenty-four hours before the period of adjournment that must be the limitation of the punishment. Now, this might be a very inadequate protection to the House and a very inadequate punishment for a party in contempt. I have no doubt that Congress intended that recusant witnesses, or witnesses refusing to answer pertinent inquiries upon proper subjects of investigation, should be punished beyond the power of the House to reach them; and that they therefore created the offense a misdemeanor, to be punished by fine and imprisonment in the courts of justice. This statute can by no means purge the contempt or abolish the power of the House to protect itself in this respect as it is able to protect itself from every other species of contempt.

“If there ever had been in my mind any doubt about the refusal of a witness to answer a proper question at the bar of the House being a contempt, this statute would now remove it, because it creates it a misdemeanor; and any man who commits a misdemeanor, either by statute or common law, in the presence of a deliberative assembly, commits contempt.

“Entertaining these views as to the power of the House to punish as for a contempt a witness who refuses to answer a pertinent question in regard to a subject-matter under investigation, there is nothing left for the court to do but to dismiss the writ. I desire to say, however, and I said in the outset, that one of the great objects which I have had in persisting in the observance of the statute law in this case was that nothing might be done which could hereafter be quoted as an evil example. I believe when this writ issues that the party is entitled under it to his trial, as provided by statute, and I not only believe that, but furthermore, that it is entirely competent for any court of justice to inquire into the privilege of Congress, and that the doctrine that Congress is the judge, and the sole and exclusive judge of its own privileges, can never be the rule in a court of justice and can never be sustained. However much we may respect that distinguished body—and no man honors it more than myself—the very assumption of such a power would be dangerous; although, as Lord Denman observes with regard to the House of Commons, it would be improper to indulge in any thought that they would attempt to abuse it. The very assumption of such a power, I say, is dangerous and not to be countenanced anywhere.

I am very glad indeed to believe, from the subsequent action of the House, that they quite concur in these views, as they have submitted the body of this man to the jurisdiction of this court to await its final action. It is far more satisfactory in every respect that, after the forms of law should have been observed, this judgment should be pronounced upon the whole case. With these views, it is my opinion that this writ ought to be dismissed, and that the prisoner should be remanded to the custody of the Sergeant-at-Arms; and my convictions are so clear on this subject that I have thought proper to interrupt counsel before they proceed further with the argument."

HON. SAMUEL SHELLABARGER'S REPLY TO MR. DURANT'S ARGUMENT.

WASHINGTON, D. C., *January 18, 1875.*

[NOTE.—The following are the main propositions of the argument of Mr. Shellabarger, of counsel for the respondent, as taken by the reporter from the brief which had been prepared for the purposes of reply, and which reply was dispensed with by the prompt decision of the case in favor of the respondent at the close of the opening argument for the relator.

This argument is here reported for the purpose of placing upon record a synopsis of the legal grounds upon which the respondent rests his resistance to the invasion of the privileges of the House of Representatives, which were alleged to be involved in the discharge prayed by the petition of Mr. Irwin.]

It is true, as has been repeatedly said by counsel for the relator, that the case now on hearing is one of singular gravity. It is one of singular delicacy also; not only because it involves the liberty of a citizen and the most cherished jurisdiction of the courts, given in defense of the liberties of the citizens, but also because the claims here asserted by the relator, pushed to their logical and necessary consequences, if not upon their very face, challenge and deny the very highest privilege of each House of Congress, and hence assail the very being of those Houses. Because the questions here raised and seriously urged for approval are thus delicate and momentous, I shall take care that each step I shall take in argument shall be taken with the utmost solicitude; that it shall be right, and that nothing shall be intentionally introduced or omitted, the introduction or omission of which may contribute to error in the result of this important cause. At the threshold of the case I wish to condense in a few sentences a synopsis of our reply to the position of opposing counsel, that our reluctance at disobeying the order of the House and making surrender of the relator to the custody of the court, with power to bail and to discharge, when the relator was undergoing the execution of the House's judgment of contempt, was unusual and illegal. Though that part of the case is now past, I shall here put upon record, at the head of this reply, a careful restatement of what I deem the high and most solemn duty of the courts and of the two Houses toward each other in such a case as was presented by the application for this writ.

First. Since the statute, in substance, requires that the application or petition for the writ shall disclose the grounds of the detention and the facts relied on as showing the detention to be unlawful, and since the issuance of the writ is both by statute and the unanimous decision of the Supreme Court (*Ex parte Kearney*, 7 Wheaton, 38) not a matter of absolute right, and should be refused where the petition shows, as this one does, that the prisoner was held in execution of the judgment of the House, pronounced as to a subject-matter over which the House has, as a court, unquestioned, sole, and exclusive jurisdiction, to wit,

the subject-matter of contempt of the authority of the House; therefore the issuance of the writ was improvident and an unintentional invasion of the privileges of the House.

Second. That there are cases in which, as a matter of law and right practice, the respondent has the right and it is his duty, without bringing the body into court, to make showing to the court awarding the writ that the writ ought to be dismissed, of which the case of Ableman against Booth, 21 Howard, 506, is an example, and this even where the writ was rightfully issued, as was decided in the Booth case.

Third. That much more in this case, where it is made to appear to the court both by the petition for a writ and the record of the House disclosed by the return, showing a conviction and a commitment for contempt of the authority of the House, as to which subject-matter of contempt the House has unquestioned jurisdiction, and which judgment no other tribunal can review or reverse, was it proper and competent for the respondent, on a motion to dismiss the writ as improvidently awarded to show said facts before he surrendered the person to be discharged or bailed, according to the pleasure of such court, having no power to retry the question of contempt.

Fourth. That it is error to suppose, as was intimated by the judge during this hearing, that since the petition disputed the rightfulness of the questions which were refused to be answered, therefore the petition denied jurisdiction of the House over the subject-matter for which the relator was committed. The subject-matter which secured the jurisdiction of the House as the petitioner showed, for which he was convicted, and for which he was committed, was "contempt" of the authority of the House, and was not the specific question refused; as to the rightfulness of which questions the House alone, and no other tribunal, can judge.

Fifth. If, as claimed on the other side, the House must bow to every allowance of the writ, however violative of the principles laid down in *Ex parte Kearney*, 7 Wheaton, 38, and the House can not even show on a motion to dismiss the writ that it was allowed, as was not done in this case, under the influence of the grossest imposition or mistake or a wanton abuse of the power of the court, and if the House must submit the person to be discharged at the pleasure of every Federal judge, then the supremely vital powers of the House of Representatives are completely at the mercy of every such judge in America who happens to have jurisdiction to issue the writ, and this although he acted at chambers when the House and its officers were wholly ignorant of the existence of the application.

With this statement in briefest outline of the principles which have actuated us hitherto in the progress of this case, I now proceed to the consideration of the question discussed by the able counsel who has just concluded his argument. The main point relied upon for the discharge of the prisoner is that of the act of 1857, and the recent revision thereof, and which make the refusal of the prisoner to answer a misdemeanor and require the Speaker to certify, for prosecution, to the United States district attorney for the District of Columbia, have abolished all power of the House to commit or in any wise punish for this particular contempt, or to enforce answers from the recusant witness.

Other points are also made by the learned argument just ended touching the extent of the jurisdiction of the House, and also affecting the conclusiveness of its judgments in matters relating to its privileges. Each of these two views of the case, as presented by counsel, demands that I shall carefully state the sources from whence the House derives this

power over contempts of its authority; the character in which it acts when it tries questions of contempt or questions affecting others of its privileges; the sources and extent of those privileges; the force and binding effects of these judgments touching these and other like questions. Though some of the propositions I am about to state may not be expressly questioned by the other side, yet I find it essential here to restate them, and to refresh our memory of them, to the end that I may show how fatal these propositions are to that main claim of the argument on the other side, namely, that the Congress has by law stripped both of its two Houses of one of the powers most essential to their very existence, and have delegated these powers to the keeping and the control of the grand and petit juries of the District of Columbia.

In now proceeding to the consideration of these various propositions to which I have just alluded, I shall content myself by stating them and the authorities on which they rest, and shall attempt little in the way of elaborate argument. And first of all, the very foundation on which the learned gentleman rested his whole case, and which, if removed, tumbles into ruin his entire argument, is this, in its effect, to wit: That since whatever power the two Houses possess over the matter of contempt of their authority by witnesses is derived from what he calls the *lex parliamentaria*, the common law of Parliament, and is not derived from the Constitution; and hence being so derived as a mere principle of common law, it is competent for Congress to either delegate it to grand juries, or to do with it what else the Congress may please. Now, this proposition is one which I respectfully submit is in the very teeth of the repeated, the express, elaborate, and unanimous decisions of the Supreme Court of the United States, and is against the authority of every great writer upon our Constitution to whom we have access. The proposition is that the power of the House over and in the punishment of contempts is not derived from the Constitution. This is what I have just denied, and I now state, not in full, but briefly, the authorities upon which that denial is based. First, I assert that neither Congress nor either House of Congress possesses any power except such as is derived from the Constitution of the United States, either expressly or by implication. On this point the words of Chief Justice Marshall are, in *Martin v. Hunter's Lessee*, 1 Wheaton, 326:

The Government of the United States can claim no powers which are not granted by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication.

Mr. Cooley states, page 9:

The Government of the United States is one of enumerated powers, the Constitution being the instrument which specifies them, and in which authority should be found for the exercise of any power which the National Government assumes to possess.

Upon the very point now under consideration, to wit, whether the power of one of the Houses to imprison witnesses for contempt is one of the powers derived from the Constitution of the United States, the Supreme Court of the United States, after a most elaborate discussion in the case of *Anderson v. Dunn*, 6 Wheaton, 204, decided that such power is one derived from the Constitution of the United States as one of the implied powers of the several Houses conferred by that instrument. The following is some of the language of the Supreme Court upon this point:

If the House of Representatives possessed no authority to punish for contempt the initiating process issued in the assertion of that authority must have been illegal; there was a want of jurisdiction to justify it.

It is certainly true that there is no power given by the Constitution to either House to punish for contempts, except when committed by their own members; nor does the judicial or criminal power given to the United States in any part expressly extend to the infliction of punishment for contempt of either House, or any one coordinate branch of the Government. Shall we, therefore, decide that no such power exists? It is true that such a power, if it exist, must be derived from *implication*, and the genius and spirit of our institutions are hostile to the exercise of *implied powers*. Had the faculties of man been competent to the framing of a system of government which would have left nothing to *implication*, it can not be doubted that the effort would have been made by the framers of the Constitution. But what is the fact? There is not in the whole of that admirable instrument a grant of powers which does not draw after it others, not expressed, but vital to their exercise; not substantial and independent, indeed, but auxiliary and subordinate. (6 Wheaton, 225, 226.)

But it is argued that the inference, if any, arising under the Constitution is against the exercise of the powers here asserted by the House of Representatives; that the express grant of power to punish their members respectively, and to expel them, by the application of a familiar maxim, raises an implication against the power to punish any other than their own members.

This argument proves too much; for its direct application would lead to the annihilation of almost every power of Congress. To enforce its laws upon any subject without the sanction of punishment is obviously impossible. Yet there is an express grant of power to punish in one class of cases only, and all the punishing power exercised by Congress in any cases, except those which relate to piracy and offenses against the law of nations, is derived from *implication*. Nor did the idea ever occur to anyone that the express grant in one class of cases repelled the assumption of the punishing in any other. (6 Wheaton, 211-233.)

In reply to the suggestion that on this same foundation of necessity might be raised a superstructure of implied powers in the executive and every other department, and even ministerial officers of the Government, it would be sufficient to observe that neither analogy nor precedents support the assertion of such powers in any other than a legislative or judicial body. (6 Wheaton, 233, 234.)

Judge Kent, in speaking of this decision, in the first volume of his Commentaries, side page 236, says:

There is no power expressly given to either House of Congress to punish for contempts, except when committed by their own members; but in the case of Anderson, who was committed by order of the House of Representatives for a contempt of the House and taken into custody by the Sergeant-at-Arms, an action of trespass was brought against the officer, and the question on the power of the House to commit for contempt was carried by writ of error to the Supreme Court of the United States. The court decided that the House had that power, and that it was an implied power, and of vital importance to the safety, character, and dignity of the House.

It is surely safe for us to assume upon these authorities that the power of the House of Representatives over the subject-matter of this commitment, to wit, contempt, is a power that it derives from the Constitution of the United States, and not from the common law of England. The state of the common law of England and of the rights of the two houses of Parliament are looked to by our courts for the two purposes—

First. Of determining whether it was the intention of the framers of the Constitution to confer this power over contempt as one of the implied powers of the Houses, and, second, to measure and define the extent of that power, if it existed. Having now established that this power over contempts and every other privilege of the several Houses is a power derived from the Constitution, we proceed to the next proposition of our argument.

Second. That the power to punish for contempt is one of the powers of the House, the extent and character of which is measured by the principles of the common law of Parliament, is also well settled. Mr. Cushing says, section 684, p. 269:

It may be laid down, therefore, first, that every legislative assembly in the United States possesses all the powers of jurisdiction in a general way which are recognized by the common parliamentary law.

See also Cushing, p. 272, end of section 695, where it is said:

In the foregoing, and all the States mentioned in this paragraph, therefore, as well those where constitutions do not, as in those where they do, contain the general clause above mentioned, it may be considered that each of the legislative branches has jurisdiction, according to the common parliamentary law, of all offenses committed against it by persons not members.

Mr. Cooley, in *Constitutional Limitations*, 134, says: "Each House may also punish for contempts of its authority by other persons without express authority from the Constitution therefor." And in support of this proposition he cites *Anderson v. Dunn*, 6 Wheaton, 204; *Burdett v. Abbott*, 14 East, 1; *Stockdale v. Hansard*, 9 Adolphus & Ellis, 231; *Burnham v. Morrissey*, 14 Grey, 226; *State v. Matthews*, 37 New Hampshire, 450.

Third. Each House, in acting on questions of contempt and the like, is a court; its acts are judicial in their nature, and a decision in such case, on a question of contempt, is a judgment of the court.

Cushing's *Parliamentary Law*, section 642, says, in speaking of the incidental powers of the House other than inquisitorial:

The other incidental powers of a legislative assembly, being more strictly analogous to those exercised by judicial tribunals, constitute its judicial powers as distinguished from its legislative, and accordingly, in the exercise of these functions, a legislative assembly is considered as a court, and the journal of its proceedings, a record. (*Ex parte Kearney*, 7 Wheaton, 38.)

Justice Story, in discussing the question of the power of one court to discharge on habeas corpus a person committed for contempt by another court, says:

Adopting the words of Lord Chief Justice De Grey in *Crosby's case*, 3 Wilson, 188, "When the House of Commons adjudged anything to be a contempt or breach of privilege, their adjudication is a conviction, and their commitment in consequence is execution. And no court can discharge on bail a prisoner that is in execution by the judge of another court." * * * It can do nothing when a person is in execution by the judge of the court having competent jurisdiction.

In the same case, page 44, Story adds, quoting with approbation the words of Justice Blackstone:

All courts, by which I mean to include the two houses of Parliament and the courts of Westminster Hall, can have no control in matters of contempt. The sole judicature, of contempt and punishment thereof belongs exclusively, and without interfering, to each respective court. Infinite confusion and disaster would follow if courts by writs of habeas corpus could examine and determine the contempts of others.

In 1 Kent's *Commentaries*, side page 236, after showing by the case of *Anderson v. Dunn* that the Houses held the implied and incidental power to imprison witnesses, the author adds these words:

The decision of the Supreme Court in the case of *Anderson* is accompanied with a course of reasoning which would seem to be sufficient to place the authority of each House of Congress to punish contempts and breaches of privileges on the most solid foundation, independent of the absolute authority of the decision. The constitutional exercise of the same authority by each House of Parliament has been repeatedly vindicated in Westminster Hall. It is a power inherent in all legislative assemblies, and is essential to enable them to execute their great trust with freedom and safety, and it has been frequently exercised, not only in Congress but by the respective branches of the State legislatures, and may be considered as *indisputably acknowledged and settled*. (Story's *Commentaries*, vol. 2 p. 305, 317.) What acts shall amount to a contempt of either House of Congress are not defined, and must be left to the judgment and discretion of the House under the circumstances of each case.

As to the inconvenience resulting from the doctrine laid down in *Anderson v. Dunn*, the Supreme Court adds: "Where the law is clear, this argument can be of no avail." And in *Dunn v. Anderson*, 6

Wheaton, 235, the Supreme Court repeats that this argument of inconvenience is chimerical.

In *Ex parte* Nugent, American Law Journal, 1848-'49, p. 107, decided by the circuit court for the District of Columbia, in May, 1848, and in which the attempt was made to discharge Nugent, who was in custody of the Sergeant-at-Arms of the Senate for contempt in refusing to answer as a witness, there is a most exhaustive collection and review of the authorities, and a decision expressed in these words in the syllabus:

Every court, including the Senate and House of Representatives, is the sole judge of its own contempts and in cases of commitment for contempt. In such case, no other court can have a right to inquire directly into the correctness or propriety of the commitment, or to discharge the person on habeas corpus.

Fourth. Because the House has, touching contempts of its authority, the powers of the House of Commons at common law, as defined in the case of Dunn against Anderson, and because further, when it tries and decides a question of contempt it sits as a court, and its order is a judgment of a court, provable by its records or journals; therefore its orders as to a question of contempt are final, not reviewable either on habeas corpus or in any other way by any other tribunal, and they have as judgments every attribute of a judgment of every other court of supreme jurisdiction.

Cushing on Parliamentary Law, p. 257, section 645, says, in treating of the incidental judicial powers of the House:

This jurisdiction being conferred for the purpose of enabling a legislative assembly to discharge its peculiar functions in a free, independent, and intelligent manner, is in its very nature exclusive and final. (See also Kearney's Case, 7 Wheaton; Kent's Commentaries, 236, note.)

Touching the extent of this implied power to punish witnesses for contempt, we affirm that imprisonment of a witness refusing to give testimony for contempt is among the implied powers of the House; that this is not an open question, being settled not only by the immemorial practice of Parliament by the uniform practice of the House, but also by the unanimous judgment of the Supreme Court of the United States.

In *Anderson v. Dunn*, 6 Wheaton, 204, after the court had in that case after hearing most elaborate arguments upon an exhaustive review by the court of the whole subject of the existence of this power under the Constitution, the court reached the conclusion that the House of Representatives has jurisdiction to punish and to imprison for contempt, and they declared that any other doctrine is too wild to be suggested.

Mr. Cushing, p. 402, section 1011, declares that there is no reason to doubt that the House may put a contumacious witness into close confinement.

In Cushing, p. 401, section 1011, it is declared that because these commitments of contumacious witnesses are meant both for punishment and remedy, therefore—

A contumacious witness is usually committed in the first instance to the custody of the sergeant-at-arms. If this fails to induce him to submit himself to the order, he may then be committed to Newgate, or some other public prison.

There seems no reason to doubt that the House may put a witness in close confinement.

The same author, in section 1011, says:

When a witness refuses to answer the question which he is directed to answer, or to produce a paper or document, the proceeding against him is intended as not only a punishment for his contempt, but also to compel him to obey the order.

In Barclay's Digest, 231, it is said:

Failure or refusal of a witness to testify is a breach of the privileges of the House, and has been punished by a commitment to the custody of the Sergeant-at-Arms, by expulsion from the floor as a reporter, and by commitment to the common jail of the District of Columbia.

He then adds a reference to the volume and pages of the Journal where these commitments to the common jail are shown.

Having now ascertained by the authorities that we have cited that the powers of the House of Representatives touching the privileges of the House are derived from the Constitution of the United States; that in the execution of these powers, in assertion of the privilege of the House, the House acts and sits as a supreme court; that its decisions upon questions of contempt are exclusive and final, as the judgments of any other supreme court; and that such commitments for contempt may be, at the discretion of the House, either to the custody of the Sergeant-at-Arms or to the common jail; that the legal design and purpose of such commitments are not merely punishment, but also remedial, and in aid of its power to enforce the production of testimony.

We are now brought to the consideration of the only ground upon which this application for a discharge is rested. That ground we have already stated, namely, that the Congress by the law of 1857, and the recent revision thereof, has repealed its power to punish for contempt, and delegated it to the authorities of the District of Columbia. This revised statute is in these words:

SEC. 102. Every person who, having been summoned as a witness by authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or in committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the subject under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100, and imprisonment in a common jail for not less than one month nor more than twelve months.

SEC. 103. No witness is privileged to refuse to testify to any fact or to produce any paper respecting which he shall be examined by either House of Congress or by any committee of either House, upon the ground that his testimony to such facts or his production of such paper may tend to disgrace him or otherwise render him infamous.

SEC. 104. Whenever a witness, summoned as mentioned in section 102, fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action.

That the enactment of this statute and the revision thereof have not repealed or modified the power of the House to punish for contempt is established by the following considerations and authorities:

First. That it is wholly incompetent for the two Houses of Congress, by law, to strip either House of any one of its constitutional prerogatives or privileges, whether such prerogative or privilege be conferred upon such House by express provision or by necessary implication. Upon the most obvious and self-evident principle is it true that an implied power can no more be legislated away from either House than can an express power. There is no express power in the Constitution anywhere given to either House to subpoena and examine witnesses in any case, and the power to examine a witness in the exercise of the House's power to present impeachments is an implied power. Can it be possible that the two Houses of Congress are competent to enact

that hereafter the House of Representatives shall have no power to call or examine witnesses in the matter of presenting impeachments? If the Congress is competent to strip the House of one of its implied powers, to wit, the one to punish witnesses for contempt, then so may the Congress deprive the House of its implied powers to enforce any one of its privileges. How would an act of Congress sound which enacted that hereafter the House of Representatives shall have no power to subpoena witnesses, to punish them for contempt, or to exercise any other of its judicial and implied powers? But if Congress can strip the House of one necessarily implied power, it can of all; and if it can do this, by making a district grand jury the tribunal to try whether its powers have been outraged or derided, then it can delegate that trial to a town meeting or to any other authority it may please. If it may strip the House of all its judicial powers, held for its self-preservation, by an act which hands them over to a district grand jury, then it may strip the House of these by their simple abolishment, and without constituting even a constable to try and decide when the House has become a victim of contempt.

Upon the most obvious constitutional principles, therefore, had this law of 1857 in express words attempted to deprive the House of its power to punish witnesses, it would have been simply nugatory, because that power is inalienable, and, as has been a thousand times held, absolutely indispensable to the execution of the powers of the House. But this question of the nonalienability of this power is not an open one upon authority. The Congress of 1851, in the act attempting to regulate the methods by which the House could execute its exclusive power to judge of the election of its members, laid down certain requirements as to giving notices of contests, making answers thereto, and taking and transmitting the testimony in such contests. This act, it will be observed, was not an attempt to delegate the power of the House to judge of an election, but only a regulation of the methods by which the House should be governed in reaching the actual trial and judgment. And yet, as to the binding force of that act upon the House of Representatives, it has been decided as often as the question has arisen in the House that that law, even merely attempting to regulate the methods of the proceedings of the House in a trial over which it has sole jurisdiction, is not a law. It has been held that it is but a wholesome rule, and that the House may, in its discretion, wholly disregard the law in every proceeding in the course of the contest, simply because the Congress has no power to interfere with this exclusive privilege with the House. (See *Williamson v. Sickles*, 2 Election Cases, 288; *Henrison v. Davis*, *ibid.*, 241.)

Again, the same thing is in principle decided in the case of the *Ohio Life Insurance and Trust Company v. Debolt*, 16 Howard, 441, where the Supreme Court says: "No one legislature can, by its own acts, disarm its successor of any of the powers or the rights of sovereignty confided by the people to the legislative body, unless authorized to do so by the constitution under which it is elected." Surely no one will contend that it is any more competent for Congress to tie up by legislation the constitutional powers of a future House than it is to tie up the powers of a future Congress. The same thing is in legal principle decided also in *Ex parte Garland*, 4 Wallace, 334, where it is held that the power conferred by the Constitution upon the President to grant pardons is unlimited in its operations, except in cases of impeachment, and is not subject to legislative control. Can it be successfully contended that the

constitutional power of the House over impeachment, over expulsion of members, over punishments for contempt, and the like, is any more subject to be impaired by legislation than is the constitutional power of the President touching pardons? Plainly, therefore, had the Congress, by the law of 1857 and the revision thereof, expressly enacted that hereafter the House shall have no power to punish for contempt, but that such power shall be delegated to the grand jury of the District of Columbia, the act would have been wholly void.

Again, this act does not purport to strip the House of its power to punish for contempt. It contains no word or hint negating the continuance of the power of the House to so punish. It simply declares the refusal of witnesses to answer a misdemeanor, and as a method of insuring the prosecution of this misdemeanor, it requires its certification to the District authority. To hold that this statute repeals or abolishes by implication the constitutional power of the House to punish for contempt when it has no word in it indicating that such was the purpose of the act, and when there is nothing in the act repugnant to the idea of its being still left competent for the House to punish the same act as a contempt—to hold that is violative of the established rule of construction of such statutes. Sedgwick on Statutes, p. 97, states the rules in these words:

A general statute without negative words will not repeal the particular provisions of the former one, unless the two acts are irreconcilably inconsistent.

And this is true as to the effect of a statute upon the existing common-law remedy. The old one remains, unless the act necessarily abolishes it. (See Sedgwick on Statutes, 342.)

Again it is claimed that to punish this contumacy of a witness as to contempt and also as to misdemeanor is in violation of the Constitution, and is the infliction of a double punishment for the same act. This is plainly a mistake. The following suggestions will fully illustrate and enforce the proposition that it is a mistake. The act of February 5, 1867 (14 Statutes at Large, 385), makes the refusal of the respondent to a writ of habeas corpus to obey the writ, or to make return, or the making of a false return, a misdemeanor. So does the act of 2d of March, 1833. (4 Statutes at Large, 634.)

Now, will it be contended in the present case that your honor in the case now at bar has no power to punish as a contempt a refusal of the defendant to obey your order in this case, because such refusal is also indictable under the statute? The act of February 26, 1853 (10 Statutes at Large, 171), makes it a high crime to bribe or to offer to bribe a member of Congress. Do you suppose that because this act has made the bribery of a member a high crime that therefore it is lawful, so far as a contempt of a House is concerned, to tender in the presence of the House to every member bribes for his vote during the calling of the roll, in the presence of the House, and that the House would have no power to punish that act as a contempt, because it had been made a high crime?

Again, the Constitution expressly gives the House power to punish members for disorder, and the statute makes a murder or maiming of a member of Congress by a fellow member high crime, and will punish it as such by indictment; that such statute so making it a crime has taken from the House all power to punish the same act as disorder, when the murder was done in the presence of the House.

Again, assaults and batteries, murders, riots, and arson, frauds by attorneys, and the like, when done in the presence of the courts, are con-

tempts of the courts; and yet these same acts are also indictable and punishable as crimes under statutes. Is it possible that because these acts have been made crimes under statutes, that therefore the same acts when done in the presence of the Houses of Congress or the courts of the country are not punishable as contempts of the courts or of the Houses?

Again, it is not at all unusual for the same act to constitute several offenses against jurisdictions or governments. In *Fox v. Ohio*, 5 Howard, 410, it was held the same act of uttering of counterfeit coin of the United States may be made indictable and punishable both by State law and Federal law. But the same question came up in a celebrated case of Samuel Houston, of Texas, for an assault committed in the presence of the House, and he was punished by the House for contempt. He was afterward indicted and punished by the authorities of the District for the same act, and it was held that his punishment by the House was no bar to his punishment under the law of the District.

In volume 2, *Opinions of the Attorneys-General*, p. 668, is found the following opinion, which I give in full:

Punishment by the House of Representatives for assault and battery on the person of one of its members is no bar to an indictment and conviction in the District court for the same act.

The punishment of Gen. Houston by the House was for a breach of privilege and for contempt of the House; the indictment and conviction were for a violation of a public law.

ATTORNEY-GENERAL'S OFFICE, *June 25, 1834.*

SIR: In answer to the question submitted to me on the memorial of Gen. Houston, who appears to have been indicted, convicted, and fined in a criminal court in this District for an assault on the person of a member of the House of Representatives, after having been previously punished by that House for the same act, as a contempt and breach of privilege, I have the honor to state that, in my opinion, the proceedings of the House constituted no bar to the subsequent indictment and conviction. The fifth amendment to the Constitution of the United States, which provides that no person "shall be subject for the same offense to be twice put in jeopardy of life or limb," does not apply to cases of this sort. Courts and other bodies which have the power to punish for contempts are invested with that power, and are supposed to employ it for the purpose of protecting themselves in a due exercise of their appropriate functions, and not for the purpose of vindicating the general law of the land, which may also have been violated by the same act. Technically, therefore, Gen. Houston has not been twice tried for the same offense. The act committed by him was one and the same, and it constituted but one indictable offense; and he was, therefore, subject to only one conviction on indictment. But if this act was also a breach of the privileges of the House of Representatives and a contempt of the House, they had the right to punish him for the contempt independently of the action of the criminal court; and so *vice versa*.

I am, sir, etc.,

B. F. BUTLER.

TO THE PRESIDENT OF THE UNITED STATES.

Again, this question came before the highest court in New York, in the case of *Yates v. Lansing*, decided in the court of errors of New York. (See 9 Johnson's Reports, 395.) The chancellor committed one of the officers of the court of chancery for malpractice and contempt, and the judge of the supreme court, in application on habeas corpus, discharged the prisoner, and the chancellor afterward recommitted for the same cause, and action was brought under the fifth section of the habeas corpus act against the chancellor for the penalty attached to an order of commitment for the same cause after discharge on habeas corpus. Various questions are elaborately discussed in the case, and among other questions it became material to inquire whether, where the same act was a contempt and also by statute made a crime, the conviction

was a bar to proceedings for contempt, or the commitment for contempt a bar to proceedings on indictment. Upon this point Platt, Senator, on pp. 216 and 217, S. P., uses the following language:

The right of punishing for contempts by summary conviction is inherent in all courts of justice and legislative assemblies, and is essential for their protection and existence. It is a branch of the common law adopted and sanctioned by our State constitution. The discretion involved in this power is in a great measure arbitrary and undefinable, and yet experience of ages has demonstrated that it is perfectly compatible with civil liberties and an auxiliary to the purest ends of justice. The known existence of such a power prevents in a thousand instances the necessity of exerting it, and its obvious liability to abuse is, perhaps, a strong reason why it is so seldom abused.

This power extends not only to acts which directly and openly insult or resist the powers of the court, or the persons of the judges, but to consequential, indirect, and constructive contempts, which obstruct the processes, degrade the authority, or contaminate the purity of the court. (4 Blackstone's Commentaries, 280; 2 Hawkins, C. 2, C. 22; 1 Com. Dig., Attachment A.)

The officers of the court are peculiarly subject to its discretionary powers, and may be punished in this summary manner for oppression, extravagant indulgence, or abuse of their official capacity.

A contempt is an offense against the court as an organ of public justice, and a court rightfully punishes with summary conviction, and whether the same act be punishable as a crime or misdemeanor on indictment or not. To challenge a Senator or a judge may under certain circumstances be a contempt, but it is certainly indictable. A conviction on indictment will not purge the contempt, nor will a conviction for a contempt be a bar to an indictment. The offense may be double, and so are the remedy and the punishment. For instance, assaults in the presence of the court, rescues, expression of libel upon the court or its suitors relating to suits pending, forging a writ, etc., are indictable offenses, and certainly they are also contempts. Contempts are never merged in statute offenses without express words for that purpose.

Still further, the practice of the House is itself the highest possible authority on the question of the joint construction of the statute of 1857. It being confessed on all hands that this jurisdiction in punishment of contempt does belong by common and constitutional law to the two Houses, and that if it be surrendered it is only surrendered by virtue of the construction of the statute, then on such question of surrender by construction I hold that by courtesy, if not by absolute and strict law, such as that laid down in Kearney's case, 7 Wheaton, the courts will defer to and not overrule the decision of the two Houses, which have been uniform ever since this act was passed; that the act was not meant to strip the two Houses of one of their original and highest jurisdictions, even were it constitutionally competent to do so by act of Congress.

It must be remembered that this concession by the courts to the two Houses of the right to determine whether they meant to surrender a jurisdiction confessed to have been conferred upon them by the Constitution is a very different question from the one whether the Constitution has ever conferred a given subject-matter to the two Houses as one of their privileges.

Now, touching the question so elaborately argued by the learned gentleman as to whether it is a judicial question for the courts to determine whether a given subject-matter is one coming within the privileges of the House. I doubt whether the Houses have ever asserted a claim at war with the doctrine in *Stockdale v. Hansard*, so earnestly commented upon on the other side. Certainly nothing has been or will be claimed in this case which is at war with the doctrine in the *Hansard* case. The sum total of that case, so far as the relator seeks to use it for the purposes of this case, is that the House order of publication of a libel shall not *per se* be a bar to the suit for libel. Who in this case has disputed that law? Who has said that should the House

of Representatives order the seizure of the coach and horses of a private citizen or the British minister for the use of the Speaker of the House, such order would in itself be a defense to replevin brought by the owner for the recovery of his property? And yet this is all there is for the relator in the Hansard case. There there was no judgment of the House for contempt, as there is in this.

The question whether a given subject-matter of jurisdiction is or is not one of the privileges of the Houses, is always judicial question into which the country may look, but the confusion and danger of conflict does not lie here, but does lie rather in the matter of the true legal idea and definition of the words "subject-matter of jurisdiction." This case furnishes a good illustration of this point. The subject-matter in this case, over which the House has declared jurisdiction, is the making of inquest as to the use of money to corrupt the legislation of Congress. Here the subject-matter of jurisdiction is not what shall be the character of any particular question or step resorted to in making that inquest as to this last, to wit: What question shall be asked in that inquest? The decision of the House is final, and no power on earth can review and retry the question whether the House had asked a relevant or improper question. So when it came to try Irwin on the charge of contempt. Then the subject-matter was "contempt of the House," and that matter being confessedly within the House's jurisdiction, no court can review or reverse the House's judgment of contempt or decide that improper questions were asked him in adjudging upon his contempt. Hence his denial in his petition for the writ that the questions were proper ones is a wholly immaterial denial; is one that has no significance in law as applied to this case, and one that he had no power to either aver or prove as against the judgment of contempt. This is so merely because the attempt to aver and prove that improper questions were asked on his trial is an attempt to review upon the writ of habeas corpus a judgment of the House touching a subject-matter of which the House had a clear jurisdiction, to wit, the subject-matter of contempt. And so are all the cases upon this point, which extend through centuries. Upon this point take, for example, the case of Murray, 1 Wilson's Reports, 299, where the court uses these words:

They granted the writ of habeas corpus not knowing what the commitment was, but now it appears to be for a contempt of the privileges of the House of Commons. What these privileges of either house are we do not know, nor need they tell us what the contempt was, because we can not judge of it.

Or take the case of *Rex v. Fowler*, 8 Term Reports, 341, Lord Kenyon says in that case, where the Commons had committed for contempt of the house: "Having seen the return we are bound to remand the defendant to prison because the subject-matter belongs *ad aliud examen*."

And in the same case Gross, judge, said:

The adjudication of the house on the contempt was a conviction, and the commitment in consequence was execution. That every court must be sole judge of its own contempts.

Or take the case of *Stockdale v. Hansard*, 36 Common Law Reports, where the chief justice, Lord Denman, on page 67, expressly declares that "the privilege of committing for contempt is inherent in every deliberative body invested with authority by the constitution."

On page 69 he declares "that in respect to these privileges of the House coming within their jurisdiction, I freely admit that the courts have no right to interfere."

In *Howard v. Gosset*, 10 Adolphus & Ellis, N. S., 359, 441, the court, after an elaborate consideration, held the same doctrine.

Or, on the same point, take the case of *Kearney*, 7 Wheaton, 243, Chief Justice Story uses these words:

It is also to be observed that there is no question here but the commitment was made by a court of competent jurisdiction and in exercise of an unquestionable authority. The only question was, not that the court acted beyond its jurisdiction, but that it erred in its judgment of the law applicable to the case. If, then, we are to give any relief in this case, it is by a revision of the opinion of the court given in the course of a criminal trial, and thus asserting the right to control its proceedings and to take from them the conclusive effect which the law intended to give them. If this were an application for a habeas corpus after judgment, on an indictment for an offense within the jurisdiction of the circuit court, it could hardly be maintained that this court could revise such a judgment or the proceedings which led to it, or set it aside and discharge the prisoner. There is in principle no distinction between that case and the present; for if a court commits a party for contempt their adjudication is a conviction, and their commitment in consequence is execution.

And so the law was settled upon full deliberation in the case of *Bras Crosby*, lord mayor of London, 3 Wilson, 188. And see further the authorities there cited by Justice Story. These cases do authorize me to employ the language of Chancellor Kent touching this point, when he says "that the law laid down may be considered as indisputably acknowledged and settled; that there can be no review on habeas corpus, or otherwise, by any tribunal whatever, of the rightfulness of the judgment of the House when it has rendered a judgment of conviction for contempt when such contempt arises in proceedings in a matter over which the House had jurisdiction."

Having now established upon principle and incontrovertible authority that no court can review the judgment of the House of Representatives upon a subject-matter within the House's jurisdiction as a question of privilege, and that the relator is in custody and under execution of such judgment, and that no act of Congress either has attempted to or could abolish, modify, or interfere with the constitutional power of the House to exclusively judge of such subject-matter, this proceeding, we submit, must be dismissed and the custody of the House no further interfered with.

**PRIVILEGES OF THE HOUSE OF REPRESENTATIVES—REAL-ESTATE
POOL—CONTUMACIOUS WITNESS—WRIT OF HABEAS CORPUS.**

**FORTY-FOURTH CONGRESS, FIRST SESSION, MICHAEL C. KERR, OF INDIANA,
SPEAKER.**

CASE OF HALLET KILBOURN.

This case is perhaps the most important included in this compilation, for the reason that the decision of the U. S. Supreme Court growing out of it (case of Kilbourn *v.* Thompson) was a practical reversal of the decision of said court made in the case of Anderson *v.* Dunn, p. — of this volume. As a difference of opinion exists as to the exact question decided, the full text of said decision is given. (See pp. 30, of this compilation.)

On January 24, 1876 (first session Forty-fourth Congress), the House of Representatives adopted the following preamble and resolution submitted by Mr. John M. Glover, of Missouri:

Whereas the Government of the United States is a creditor of the firm of Jay Cooke & Co., now in bankruptcy by order and decree of the district court of the United States in and for the eastern district of Pennsylvania, resulting from the improvident deposits made by the Secretary of the Navy of the United States with the London branch of said house of Jay Cooke & Co. of the public moneys; and whereas the matter known as the "real-estate pool" was only partially inquired into by the late Joint Select Committee to inquire into the affairs of the District of Columbia, in which Jay Cooke & Co. had a large and valuable interest; and whereas Edwin M. Lewis, trustee of the estate and effects of the said firm of Jay Cooke & Co., has recently made a settlement of the interest of the estate of Jay Cooke & Co. with the associates of the said firm of Jay Cooke & Co. to the disadvantage and loss, as it is alleged, of the numerous creditors of said estate, including the Government of the United States; and whereas the courts are now powerless, by reason of said settlement, to afford adequate redress of said creditors;

Resolved, That a special committee of five members of this House, to be selected by the Speaker, be appointed to inquire into the nature and history of said "real-estate pool" and the character of said settlement, with the amount of property involved, in which Jay Cooke & Co. were interested, and the amount paid or to be paid in settlement, with power to send for persons and papers, and report to this House.

On January 28 following, the Speaker announced as the select committee, under the foregoing resolution, Mr. John M. Glover, of Missouri, Mr. Jephtha D. New, of Indiana; Mr. Burwell B. Lewis, of Alabama; Mr. Henry O. Pratt, of Iowa, and Mr. A. Herr Smith, of Pennsylvania, which was designated the "Real-Estate Pool and Jay Cooke Indebtedness Committee."

On March 14, following, Mr. Glover, from said committee, made a partial report, in which, after reciting the aforesaid preamble and resolution, it was said:

Under said resolution, the undersigned committee was appointed, and, in conformity with the power therein conferred, have sent for persons and papers. The committee caused a subpoena *duces tecum* to be issued and duly served on one Hallet Kilbourn, a resident of this District. Said subpoena is in the words and figures following, to wit:

“HALLET KILBOURN:

“We command and strictly enjoin you that, laying aside all manner of business and excuses whatsoever, you appear in your proper person before the select committee of the House of Representatives, appointed on the 28th day of January, A. D. 1876, of which Hon. John M. Glover is chairman, at their room in the Capitol, the room of the Committee on Mines and Mining, in the City of Washington, D. C., on Saturday, the 4th day of March, A. D. 1876, at the hour of 10 o'clock a. m. of said day, to testify what you know in regard to the matters to be inquired of by said committee; and that you also diligently and carefully search for, examine, and inquire after, and bring with you and produce at the time and place aforesaid, the certain deeds, and deeds of trust, declarations of trust, and printed papers referred to therein, relating to the following squares, parts of squares, lots and parcels of ground, or real property, situate in the city of Washington, in the District of Columbia, to wit, all the property described in the paper-writing hereto attached, marked Exhibit A, and made a part of this subpoena, also relating to any other property purchased or sold by you as trustee for either the real-estate pool in which the firm of Jay Cooke & Co., or Messrs. Stewart, Hillyer & Sunderland or either of them, had an interest, together with all the copies, drafts, and vouchers relating to said documents, and all other documents, letters, and paper writings whatsoever, including bank-books, bills of exchange, bank checks, stubs of checks, ledgers, blotters, day books, and other books of accounts, maps, that can or may afford any information or evidence relating to the said matters to be inquired of by said committee, belonging to you, or subject to your control, either individually or as trustee, or as a member of the firm of Kilbourn & Latta.

“Herein fail not, and make return of this summons.

“Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 28th day of February, A. D. 1876.

[SEAL.]

“MICHAEL C. KERR,

“Speaker.

“Attest:

“GEO. M. ADAMS, Clerk.

“By GREEN ADAMS, Chief Clerk.”

Then follows as Exhibit A, referred to in the foregoing subpoena *duces tecum* (see Journal House of Representatives, p. 579, and Record, p. 1705), together with certain testimony given by said Kilbourn before said committee on March 4 and 11, concluding with a statement of Hon. Jeremiah A. Black, counsel for Kilbourn, and the reply of Mr. New, for the committee; which, with the declination of Kilbourn to answer the questions propounded for the reasons already stated, concluding with the views of the committee and accompanied by a resolution, which are herewith as follows:

* * * * *

The committee resumed the session at 3 p. m.

Mr. New stated that at the meeting of the committee this morning the witness, Hallet Kilbourn, had expressed a desire to confer further during the day with his counsel, and that in order to give him the opportunity to do so the committee had adjourned to this hour. The committee had now met, not for the purpose of hearing further argument in the premises, but of knowing what the witness had finally determined upon, as to whether he would or would not respond to the subpoena *duces tecum*, and whether he would or would not answer those questions which he had heretofore failed to answer.

Mr. Black, of counsel for the witness, said that he wanted a record made up, which would justify one party or the other in doing what they respectively intended to do. He wished, therefore, to put some questions to the witness.

By Mr. BLACK:

Q. Please state to the committee, on your oath, whether there is anything in the nature or history of this real-estate pool connected with any public affair, or whether it is purely a private matter.—A. It is purely a private matter, and has no relation, in the remotest degree, to any public interest whatsoever.

Q. Was it or not a private partnership?—A. It was entirely so.

Q. Relating to private business?—A. Yes.

Q. Was there any public money invested in it by anybody?—A. Not a dollar.

Q. Is it connected in any way with the public act of any officer of the District of Columbia or the United States Government?—A. Not in the remotest degree. Jay Cooke & Co. put in \$25,000.

Q. Are they in it now?—A. No, sir; nobody is interested in it now but Kilbourn & Latta.

Q. Have you ever objected to a revelation of that business on any other ground than that it is a mere private transaction?—A. That is the only reason why I have ever objected to answering any questions about it; that it is a purely private business.

Mr. BLACK. That is all I want to ask the witness. But I want to go a little further and have this record put into shape so that it will bear the test of the scrutiny of any other tribunal before which it may hereafter be brought. To that end I call the attention of the committee to a fact which occurred before the committee at a former meeting, namely, a call upon the party who was promoting this investigation for any contradiction of the statement which the witness has just made, that this is purely a private affair; and I now repeat (representing the witness and as his counsel) his entire willingness to answer any interrogatories that the committee may put to him concerning the nature and history of the real-estate pool, so called, provided that any gentleman here, or any member of the committee, will express his conviction, grounded on any fact known to him, that there is any connection whatever with any public man that Congress has a right to investigate or to found any legislation upon. If that be so, then there is an end of all controversy; the witness "comes down" immediately and gives the committee any information that may be wanted on the subject. Otherwise it must be taken for granted that the nature and character of that transaction is what he described it to be on his oath, a purely private matter.

Mr. NEW. I desire to say, in answer to counsel and with reference to the questions he has propounded to the witness, that, in the opinion of the committee, those questions, in their very nature, contemplate the statement of a conclusion and not the statement of facts on which a conclusion may be based, not the facts from which the committee could or would form a conclusion. Therefore the committee will not ask Mr. Kilbourn any question by way of cross-examination. In the next place, I desire to say in respect to what has been said about there being no party, or about the necessity of some party making certain statements or declarations to the effect that this is a public matter and not a private matter, that on a former occasion the same proposition was suggested by yourself, and the committee then answered, as the committee now answer, that we are acting on a resolution adopted by the House of Representatives. In other words, so far as we may know from the record, the party complaining or suggesting that there may be some discovery that will be of benefit to the Government as a creditor of Jay Cooke & Co. is the House of Representatives. We feel that we have no alternative, and no duty to perform except to proceed with the investigation, for the purpose of discovering what may be (if anything) discovered as to the history of the real-estate pool, and as to the indebtedness of Jay Cooke & Co. to the Government. I desire, in conclusion, to have the witness state whether or not he desires still to abide by his action heretofore in refusing to respond to a subpoena *duces tecum*, and in refusing to respond to questions which have been propounded to him.

Mr. Black rose to make some remarks.

Mr. NEW. The committee can not hear any further argument in the matter. There has been oral argument on both sides, and if the committee is to make any progress in this investigation these arguments must, of course, have a termination.

After conference with the other members of the committee, Mr. New said:

For the purpose of giving Mr. Kilbourn and yourself a little further time to consider, we have concluded to meet again on Monday morning, at 10 o'clock, for the purpose, and sole purpose, at that meeting, without any further argument, of having the witness state definitely and positively what he will do in the premises.

The committee then adjourned.

MARCH 13, 1876 (10 o'clock a. m.).

Hallet Kilbourn, the witness, being present before the committee, the chairman said: By the agreement at the last meeting on Saturday evening this morning was set apart to hear your final decision as to whether you would respond to the subpoena *duces tecum*, and would answer those questions which you were asked, and to which you refused to respond last week.

The WITNESS. I have nothing further to say, except that I respectfully decline to answer, for the reasons heretofore stated.

The committee are of the opinion and report that it is necessary for the efficient prosecution of the inquiry ordered by the House that said Hallet Kilbourn should be required to respond to the subpoena *duces tecum* and answer the questions which

he has refused to answer; and that there is no sufficient reason why the witness should not obey said subpoena *duces tecum* and answer the questions he has declined to answer, and that his refusal as aforesaid is in contempt of this House.

J. M. GLOVER, *Chairman*.

J. D. NEW.

B. B. LEWIS.

A. HERR SMITH.

Mr. PRATT is absent.

Accompanied by the following resolution, viz:

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-Arms attending this House, or his deputy, commanding him to take into custody forthwith, wherever to be found, the body of Hallet Kilbourn, and him bring to the bar of the House to show cause why he should not be punished for contempt; and in the meantime to keep the said Kilbourn in his custody to wait the further order of the House; which, under the operation of the previous question, was agreed to.

* * * * *

The Sergeant-at-Arms, to whom was directed the Speaker's warrant under the resolution of the House, appeared at the bar of the House, having in custody, as therein commanded, the body of Hallet Kilbourn.

Whereupon,

The said Kilbourn was arraigned and the following interrogatory propounded to him by the Speaker:

"Mr. Kilbourn, you are presented at the bar of the House, upon the order of the House, under arrest on an alleged breach of the privileges of the House in refusing to answer certain questions propounded to you by the committee of the House, which questions that committee was authorized by the House to ask. It is my duty now, by authority of the House, to ask you whether you are now ready to answer those questions before the committee."

The said Kilbourn desiring to be heard by counsel,

Mr. Page moved that the request be granted.

After debate, Mr. Page demanded the previous question;

Pending which, Mr. Glover moved to lay the motion on the table.

And the question being put,

Shall the motion be laid on the table?

It was decided in the affirmative,	{	Yeas.....	117
		Nays	74
		Not voting	98

So the motion was laid upon the table.

On motion of Mr. Banks, leave was granted the said Kilburn to make his statement in writing, to be read from the Clerk's desk.

The Clerk read the paper handed him by Mr. Kilbourn as follows:

To the House of Representatives:

A committee of your body has expressed its determination to report me as a contumacious witness. You will probably be moved to punish me for this supposed offense. I beg you to hear my simple statement before you strike.

I am sure that neither the House nor the committee, nor anybody else concerned in this business, has any desire to do me a wanton injury or to invade my just rights. I am equally free from all intent to violate or evade the duty which I owe the House. So far from any actual contempt of your honorable body, I have the profoundest respect for its authority when exercised within legal limits. I do not permit myself to doubt for a moment that whatever you do will be done in good faith according to your apprehension of the law, justice, and constitutional liberty.

I am charged with refusing to answer a pertinent and proper question propounded to me by the committee. If this be true I have committed a criminal offense, but before I can be punished for it my guilt must be established upon a legal trial. Where shall the trial be had and who are my judges?

I admit that this House as well as the Senate had originally the power to try and punish for all contempts that might be committed against it; and as to contempts generally, each House is still in the possession of the same jurisdiction which it had from the beginning. But as regards the particular offense which a witness

commits by refusing to obey a subpoena or to answer a proper question, the Revised Statutes, page 17, have declared it to be an indictable misdemeanor, and transferred the whole power of trial and punishment to the criminal courts of the District. You can legally do nothing but certify through your Speaker the facts found by the committee, and leave the case to be dealt with by the district attorney, the grand jury, and the court. It will not be asserted that this law is void. No one will say that the two Houses of Congress had not the right to disarm themselves of a power which they thought might be better placed in the hands of the judicial authorities. This being done by the concurrence of both Houses and approved by the Executive in the solemn form of law, it is to be obeyed like any other law. It is of universal application, and must be followed in all cases which come within its purview. The provisions of it by express words are for "every person who, being summoned," refuses, etc., and prescribe what is to be done "whenever" a witness fails to testify.

There is no rule of interpretation which will make my case any exception out of a statute so broad in its terms. Nor will it do to say that this is not the exclusive mode of proceeding. Disobedience to the lawful process of the House is a public offense—a contempt. A hearing of the case before this body is a trial. A judgment against the accused party is a conviction. Imprisonment in pursuance of such conviction is execution. To punish a man here, and then send him to the courts to be punished again, would be a flat violation of the Constitution. The jurisdiction belongs exclusively either to the House or to the court. If one has it, the other has it not. The written law declares that it belongs to the court, and not to the House. I do not say that this law is a wise one. Perhaps it cripples the power of this body where it ought to be strengthened. It is your business to say whether it shall be repealed or not; but while it remains on the statute book you will not refuse to obey it.

The history of the legislation on this subject will satisfy you that my interpretation of the statute now in force is correct. In 1857 (Statutes at Large, p. 155) it was enacted that a witness guilty of this offense "shall, in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor." This left the House in possession of its old power, and the provision for superadding another punishment was unconstitutional. In 1862 it was repealed. (See 12 Statutes at Large, p. 335.) In 1874, upon a general revision of the statutes, the present law was passed, which gives the jurisdiction entirely to the courts, and authorizes them to inflict, not an additional punishment, but the only one that can be inflicted for the offense. It is not to be doubted that the words "in addition," etc., which the act of 1857 contains, were designedly left out of the revised code so as to bring it within the Constitution, by providing for one trial and one punishment only, and giving exclusive power to the court.

Let me remind you again that you are sitting as a criminal tribunal, to try me for a supposed offense against the United States. If you have jurisdiction, your decision is final and must be conclusively taken as right. But if the power you exercise does not legally belong to you, then your judgment of conviction will be as void as the decision of a lynch court or a military commission, and it can not be executed without making your officer a trespasser.

But I will make no conflict with the authority of this House unless I am driven to it by the stress of sheer necessity for the preservation of my undeniable rights. It is easy to bring this affair to a plain issue. If the committee of the House will find and assert the truth of any fact which connects the real-estate pool with any public interest which it is the duty of Congress to protect, you shall at once have all the information I can give you about its nature and history. I have asserted on oath that it is purely a private transaction, having no connection, direct or indirect, with any public affair or with the official conduct of any officer. The truth of my statement is made manifest by all the facts which are known, and nothing is even alleged from which a contrary inference can be reasonably drawn.

Now, let the question be squarely presented. If the committee or the House has any well-grounded reason to believe that the production of my private papers or the revelation of my private business will promote any public interest or remedy any public wrong, and if either the committee or the House will assert that to be true as a matter of fact, the House and all its committees shall have whatever is demanded, or if any private individual will make oath that the papers asked for will lead to the detection of any misgovernment or the exposure of wickedness in high places, they shall be open as day to your inspection. On the other hand, I can not acknowledge the naked arbitrary right of the House to investigate private business, in which nobody but me and my customers have any concern.

Thus far it is not alleged that my papers will prove official corruption anywhere. Jay Cooke & Co.'s connection with the pool has long ago been fully and satisfactorily explained, and no new light could possibly be thrown on it by the publication of other names. The deposit made by the Secretary of the Navy with the London house

of Jay Cooke, McCulloch & Co. is certainly useless or worse, for it can not be pretended that the pool had anything to do with that.

But it is alleged that the United States, being a creditor of Jay Cooke & Co., have an interest in showing that the trustee who settled with us for that share of the pool got less than he ought to have received. I assert that the United States are otherwise secured; that Mr. Lewis did get all he was entitled to, and I deny that the fairness of his settlement with us can be impugned by any facts sought in this investigation. But assume that these things are true, what has Congress to do with them? The bankrupt court alone has authority to furnish the remedy for a wrong like this. There and there only can a complaint be heard against the settlement made by the trustee. Do you propose to take away the jurisdiction of the court and assume it yourselves? Will you set aside the agreement of the parties by an act of Congress? Admitting for the argument's sake that my papers may be legal evidence in some possible controversy before a judicial tribunal, does that justify an unreasonable search of them now by order of this body for the purposes of an investigation to which they have no relevancy whatever?

I am far from desiring to stand in the way of any investigation you may please to make concerning public affairs. On the contrary, I will freely give you all the aid I can. But I can not submit to an examination of my private business unless some reason be assigned for it. If the House insists, I must take the consequences.

I solemnly trust that the whole House will see the gross injustice of either certifying me to the district attorney for prosecution or of convicting me here.

The same having been read,

The following interrogatories were propounded to the said Kilbourn by the Speaker:

"Mr. Kilbourn, are you now prepared to answer, upon the demand of the proper committee of the House, 'where each of these five members reside,' meaning the members of the pool? Are you prepared to produce, in obedience to the subpoena *duces tecum*, the records which you have been required by the committee to produce?"

The witness declining to answer the said interrogatories,

Mr. Glover submitted the following resolution, which, under the operation of the previous question, was read, considered, and agreed to, viz.:

Resolved, That Hallet Kilbourn, having been heard by the House pursuant to the order heretofore made requiring him to show cause why he should not answer the questions propounded to him by the committee, and respond to the subpoena *duces tecum* by obeying the same, and having failed to show sufficient cause why he should not answer said questions and obey said subpoena *duces tecum*, as aforesaid, be, and is therefore, considered in contempt of the House because of said failure.

Mr. Glover moved to reconsider the vote by which the said resolution was agreed to, and moved to lay the motion to reconsider on the table; which latter motion was agreed to.

Mr. Glover submitted the following resolution; which, under the operation of the previous question, was agreed to, viz:

Resolved, That in purging himself of the contempt for which Hallet Kilbourn is now in custody, the said Kilbourn shall be required to state to the House whether he is now willing to appear before the committee of this House to whom he has hitherto declined to obey a certain subpoena *duces tecum* and answer certain questions and obey said subpoena *duces tecum*, and make answer to said questions; and if he answers that he is ready to appear before said committee and obey said subpoena *duces tecum* and answer said questions, then said witness shall have the privilege to so appear and obey and answer forthwith or so soon as said committee can convene; and that in the meantime the witness remain in custody; and in the event that said witness shall answer that he is not ready to so appear before said committee and obey said subpoena *duces tecum*, and make answer to said questions as aforesaid, then that said witness be recommitted to the said custody for the continuance of such contempt; and that such custody shall continue until the said witness shall communicate to the House, through said committee, that he is ready to appear before said committee and make such answer and obey said subpoena *duces tecum*, and that in executing this order the Sergeant-at-Arms shall cause the said Kilbourn to be kept in his custody in the common jail of the District of Columbia.

TUESDAY, MARCH 28, 1876.

[Extract from Journal. See also Record, pp. 2008.]

* * * * *

The Speaker, by unanimous consent, laid before the House the following communications:

OFFICE OF THE U. S. ATTORNEY, DISTRICT OF COLUMBIA,
Washington, D. C., March 27, 1876.

SIR: I have the honor to inform you that the grand jury has this morning found and returned into court an indictment against Hallet Kilbourn, which comprises five counts as follows, to wit:

The first count charges him with failing to produce certain papers before a special committee of the House, of which Hon. John M. Glover is chairman.

The second count charges him with refusing to answer certain questions before the said committee.

The third count charges him with refusing to answer certain questions before the House of Representatives.

The fourth count charges him with the failure to produce the papers and the refusal to answer the questions before the committee.

And the fifth and last count charges him with the refusal to answer the questions and produce the books and papers before the House of Representatives.

I have issued a bench warrant for the arrest of Hallet Kilbourn under this indictment, and the marshal now has that warrant for service.

Yours, respectfully,

H. H. WELLS,
U. S. Attorney, District of Columbia.

Hon. MICHAEL C. KERR,
Speaker of the House of Representatives.

OFFICE SERGEANT-AT-ARMS, HOUSE OF REPRESENTATIVES,
Washington, D. C., March 28, 1876.

SIR: I respectfully report to you, and through you to the House of Representatives, that on this day at 10:15 o'clock a. m., Alexander Sharp, U. S. marshal for the District of Columbia, called upon me at my office and informed me that he held a warrant issued by the supreme court of said District, commanding him to arrest and bring before said court for trial upon a criminal charge one Hallet Kilbourn, now in my custody in the common jail of said District, by the order and judgment of the House of Representatives, because of a contempt of its authority.

Said marshal then and there further requested that he be admitted into the presence of said Kilbourn to the end that he might serve said warrant upon said Kilbourn, and take him forthwith by virtue thereof from said jail, and before said court for trial upon said criminal charge. With which request I refused to comply, inasmuch as a compliance by me with the request of said marshal would release said Kilbourn from my custody as an officer of the House of Representatives, and place him in the custody of said marshal and court aforesaid. I respectfully through you submit the matter to the House of Representatives for instructions as to what I shall do. A copy of said warrant is herewith attached.

JOHN G. THOMPSON,
Sergeant-at-Arms, House of Representatives.

Hon. M. C. KERR,
Speaker of the House of Representatives.

When

Mr. Glover submitted the following resolution, viz:

Resolved, That Hallet Kilbourn, a recusant witness, having by this House been adjudged guilty of a contempt of its authority by reason of his refusal to answer certain questions and refusing to produce, in answer to a subpoena *duces tecum*, certain documents, books, papers, etc., before a special investigating committee of this House, and said Kilbourn, because of said contempt and the judgment of this House, being now by its order and said judgment in the custody of the Sergeant-at-Arms in the common jail of the District of Columbia, there to remain in said custody

until he shall communicate to this House through said committee that he is ready to appear before said committee and make answer to said questions and obey said subpoena *duces tecum*: Therefore, because of the facts and premises aforesaid, the said Sergeant-at-Arms is ordered to retain the custody aforesaid of said witness, and not to part with his custody or to deliver him up to any other person, officer, court, or tribunal until the further order of this House.

Mr. Hurlbut moved to substitute the following resolution for the resolution submitted by Mr. Glover, viz:

Whereas on the 14th day of March, 1876, this House, by its resolution, did commit Hallet Kilbourn to the custody of the Sergeant-at-Arms of this House in the common jail of the District of Columbia for an infringement of the privileges of the House in refusing satisfactorily to answer certain questions put to him and to produce certain books and papers by order of the House, and is still held in custody under said order; and whereas afterward, in pursuance with the provisions of law, the Speaker of the House did certify to the district attorney of the District of Columbia the facts pertaining to said case, and the same were laid before the grand jury of said District, and a presentment was thereupon found against said Kilbourn for the said offense; and whereas said Kilbourn can not be tried on said presentment so long as this House holds him in custody under its rights of privilege: Therefore,

Resolved, That the Sergeant-at-Arms is hereby authorized and directed to cause said Kilbourn to be released from jail, and to deliver him over to the marshal of said District of Columbia, or other person authorized to receive him, to answer to the presentment pending in said court.

Mr. Glover moved the previous question; which was seconded, and the main question ordered;

When the question was put,

Will the House agree to the amendment offered by Hurlbut?

And it was decided in the negative,	{	Yeas.....	33
		Nays.....	191
		Not voting	65

So the amendment was not agreed to.

The question then recurring on the resolution submitted by Mr. Glover, the same was adopted.

MONDAY, APRIL 3, 1876.

[Extract from Journal. See also Record, p. 2170.]

* * * * *

Mr. Glover moved that the rules be suspended so as to allow him to submit, and the House to agree to, the following preamble and resolution, viz:

Whereas it appears from the accounts of the keeper of the House restaurant with Hallet Kilbourn that said Kilbourn, now confined as a prisoner in the District jail by order of this House, is being fed in the most extravagant and sumptuous manner, and his meals are being sent to him twice daily from the Capitol to the jail in a hack, and he is also being furnished by his friends with wines of the most expensive kind; and whereas such things are destructive of all jail discipline and of the object for which said Kilbourn has been imprisoned: Therefore,

Resolved, That the Sergeant-at-Arms is hereby authorized and required to contract with the jailer of this District to furnish said Kilbourn the same prison fare as is furnished to other prisoners in said jail, and the said Sergeant-at-Arms is hereby instructed not to furnish to the said Kilbourn any fare other than that above specified, nor to allow him any wines, liquors, or other intoxicating drink, except when the same may be prescribed to him as medicine by a regular physician of good standing.

And the question being put, Will the House suspend the rules and agree to the preamble and resolution?

Mr. Garfield, at 5 o'clock and 20 minutes p. m., moved that the House adjourn; which motion was not agreed to.

The question recurring on the question, Will the House suspend the rules and agree to the preamble and resolution?

It was decided in the negative,	{	Yeas.....	96
		Nays.....	59
		Not voting	134

(two-thirds not voting in favor thereof.)

So the House refused to suspend the rules and agree to the preamble and resolution.

WEDNESDAY, APRIL 12, 1876.

[Extract from Journal. See also Record, p. 2417.]

* * * * *

The Speaker laid before the House the following communication from Mr. Thompson, Sergeant-at-Arms of the House of Representatives, viz:

OFFICE SERGEANT-AT-ARMS, HOUSE OF REPRESENTATIVES,
Washington, D. C., April 11, 1876.

SIR: I respectfully report to you, and through you to the House of Representatives, that on this day a writ of habeas corpus has been served upon me, commanding me, as the Sergeant-at-Arms of the House of Representatives, to have the body of Hallet Kilbourn, who is now in my custody, before one of the justices of the supreme court of the District of Columbia at 10 o'clock in the forenoon on the 12th day of April, 1876, to do and receive whatever shall then and there be considered in that behalf. Said Hallet Kilbourn is now detained in my custody by the order and judgment of the House of Representatives, because of an adjudged contempt of its authority.

I respectfully ask the instructions of the House as to what my action in the premises shall be.

A copy of said writ is attached hereto.

All of which is respectfully submitted.

JOHN G. THOMPSON,
Sergeant-at-Arms, House of Representatives.

Hon. M. C. KERR,
Speaker House of Representatives.

DISTRICT OF COLUMBIA, *to wit*:

The President of the United States to John G. Thompson, Sergeant-at-Arms of the House of Representatives of the Congress of the United States of America, greeting:

You are hereby commanded to have the body of Hallet Kilbourn, detained under your custody, as it is said, together with the day and cause of his being taken and detained by whatever name he may be called in the same, before one of the justices of the supreme court of the said District, at the court-house, in the city of Washington, at 10 o'clock in the forenoon of the 12th day of this instant, to do and receive whatever shall then and there be considered of in this behalf, and have then and there this writ.

Witness D. K. Cartter, chief justice of said court, the 11th day of April, 1876.

[SEAL.]

A true copy.

R. J. MEIGS, *Clerk, etc.*

R. J. MEIGS, *Clerk, etc.*,
By R. J. MEIGS, JR., *Assistant.*

Mr. New, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to, viz:

Resolved That the matter of habeas corpus relating to Hallet Kilbourn, a recusant witness, as just called to the attention of the House through the Speaker, by the Sergeant-at-Arms, be referred to the Committee on the Judiciary for their examination and opinion as to what should be the action of the Sergeant-at-Arms in reference thereto, and that said committee report to the House on Saturday next.

SATURDAY, APRIL 15, 1876.

[Extract from Journal. See also Record, p. 2482.]

* * * * *

By unanimous consent, Mr. Hurd, from the Committee on the Judiciary, reported the following preamble and resolution, viz:

Whereas one Hallet Kilbourn was subpoenaed to testify in a certain investigation ordered by this House before a committee duly authorized to send for persons and papers; and whereas during his examination as a witness the said Hallet Kilbourn refused to answer certain questions propounded to him as such witness by said committee, and to produce certain books and papers which he was ordered by said committee to produce; and whereas for such refusal the House of Representatives has adjudged the said Hallet Kilbourn to be in contempt of its authority and has ordered him into custody until he shall purge himself of said contempt and answer the questions as propounded and produce the papers and books ordered to be produced; and whereas said committee is still engaged in the investigation which it was ordered to make by the House, and is unable to complete the same because of the contumacy of the witness; and whereas the said Hallet Kilbourn is now in execution by the legal process of this House as aforesaid; and whereas the chief justice of the supreme court of the District of Columbia has issued a writ of habeas corpus to the Sergeant-at-Arms of this House, directing him to produce before the said judge the body of the said Kilbourn: Therefore,

Be it resolved, That the Sergeant-at-Arms be directed to make a careful return of said writ, setting out the causes of the detention of said Kilbourn, and to retain the custody of his body, and not to produce it before the said judge or court without further order of this House.

Mr. Lynde submitted the following resolution as a substitute for the resolution offered by Mr. Hurd, viz:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make a careful return to the writ of habeas corpus in the case of Hallet Kilbourn, that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Kilbourn before said court when making such return as required by law.

After debate,

Mr. Jenks moved to amend the resolution submitted by Mr. Hurd, as follows, viz:

After the word "Kilbourn," where it last occurs in the resolution, insert the following words:

And the irregularity of issuing the writ without a previous order nisi, or rule to show cause.

MONDAY, APRIL 17, 1876.

[Extract from Journal. See also Record, p. 2513.]

* * * * *

The House having resumed the consideration of the report from the Committee on the Judiciary, on the subject of the writ of habeas corpus, in the case of Hallet Kilbourn, Mr. Jenks withdrew his amendment to the same;

When

Mr. Tucker moved to amend said report as follows, viz:

Strike out all after the word "Kilbourn," where it occurs before the word "therefore," at the close of the preamble, and insert the following:

And whereas the facts stated in the petition and complaint of said Kilbourn present the question whether the said writ could lawfully and properly be issued, and whether the same was not therefore improvidently awarded: Therefore,

Be it resolved, That the Sergeant-at-Arms of this House be directed to appear by counsel before the said court and make a motion to quash or dismiss said writ, or

take such other procedure as he shall be advised is proper to raise the question of the legality and propriety of the issue of said writ, upon the facts stated in the petition or complaint and as preliminary to any return to the same; and in the mean time he is directed to retain the custody of the body of said Kilbourn, and not to produce it under the order of said writ without the further order of this House.

After debate,

The question was taken on agreeing to the amendment, submitted by Mr. Tucker; which was not agreed to.

The question then recurred on the following amendment, submitted by Mr. Lynde, as a substitute for the preamble and resolution reported by the Committee on the Judiciary, viz:

Resolved, That the Sergeant-at-Arms be, and he is hereby, directed to make careful return to the writ of habeas corpus in the case of Hallet Kilbourn that the prisoner is duly held by authority of the House of Representatives to answer in proceedings against him for contempt, and that the Sergeant-at-Arms take with him the body of said Kilbourn before said court when making such return as required by law.

And the question being put,

Will the House agree to said amendment?

It was decided in the affirmative,	{	Yeas.....	166
		Nays.....	75
		Not voting.....	49

So the amendment was agreed to,

The report of the Committee on the Judiciary, as amended, was then agreed to.

Mr. Kelley moved that the vote by which the report was agreed to be reconsidered, and also that the motion to reconsider be laid on the table; which latter motion was agreed to.

FRIDAY, APRIL 28, 1876.

[Extract from Journal. See Record, p. 2818.]

The Speaker, by unanimous consent, laid before the House the following communication from the Sergeant-at-Arms:

OFFICE OF SERGEANT-AT-ARMS, HOUSE OF REPRESENTATIVES,
Washington, D. C., April 28, 1876.

DEAR SIR: I herewith hand you the decision of Hon. D. K. Cartter, chief justice of the supreme court of the District of Columbia, in the matter of Hallet Kilbourn's petition for the writ of habeas corpus, and request you to lay it before the House.

Very respectfully,

JOHN G. THOMPSON,
Sergeant-at-Arms.

Hon. M. C. KERR,
Speaker House of Representatives.

Which, with the accompanying decision, was referred to the Committee on the Judiciary and ordered to be printed.

The said decision, as transmitted by Sergeant-at-Arms Thompson, is as follows:

OFFICE SERGEANT-AT-ARMS, HOUSE OF REPRESENTATIVES,
Washington, D. C., April 28, 1876.

DEAR SIR: I herewith hand you the decision of Hon. D. K. Cartter, chief justice of the supreme court of the District of Columbia, in the matter of Hallet Kilbourn's petition for the writ of habeas corpus, and request you to lay the same before the House.

Very respectfully,

JOHN G. THOMPSON,
Sergeant-at-Arms.

Hon. M. C. KERR,
Speaker.

[Supreme Court, District of Columbia, Before Chief Justice Cartter, sitting in chambers. In the matter of Hallet Kilbourn's petition for the writ of habeas corpus. No. 11314. Criminal docket.]

STATEMENT.

The relator, Hallet Kilbourn, presents his petition under oath, stating therein that he is unlawfully imprisoned in the common jail of the District of Columbia, by John G. Thompson, Sergeant-at-Arms of the House of Representatives of the United States Congress, under an order of said House, and asking that the writ of habeas corpus shall issue to said Sergeant-at-Arms, commanding him to bring the relator before me, to the end that the cause of his detention may be inquired into; and if found to be illegal, that he may be discharged from custody.

The writ is duly issued and served upon the Sergeant-at-Arms, who responds thereto by bringing the relator before me, and makes a full and formal return of the causes for which he is held in custody.

The respondent states at length the history of the case leading to the arrest and confinement of the relator, the substance of which statement in brief, is as follows:

The House of Representatives, being duly organized, was in lawful session on the 24th of January, 1876, and on that day resolved to appoint a special committee to inquire into the nature and history of a certain matter known as the "real-estate pool" in the District of Columbia, and the character of a settlement alleged to have been made by the trustee in bankruptcy of the estate of Jay Cooke & Co. with said real-estate pool, the Government being a creditor, and interested in the assets of said bankrupt firm.

Such committee was duly empowered to send for persons and papers, and directed to report the result of their investigations to the House.

The committee, subsequently appointed, commenced its inquiry, and to that end caused a subpoena *duces tecum* to be issued and served upon the relator, commanding him to appear before it to testify, and to bring with him certain deeds, books, maps, and other papers relating to certain described lots and squares of ground in said District.

The relator appeared in obedience to the subpoena, and testified in answer to certain questions; but on being asked whether he had brought the papers and documents referred to in the subpoena, answered in the negative. He was asked further if he was willing to produce them, and he again answered in the negative.

He was then asked if he refused to produce them in response to the subpoena, and he answered in the affirmative, claiming that his papers related to his private business; and that, like every private citizen not accused of violating the law, he had the right to be protected in his papers.

The relator further declined to answer certain other questions asked him, as to the place of residence and the names of the persons who were members of said real-estate pool besides the firm of Jay Cooke & Co.

Upon this refusal of the relator so to answer questions and produce papers, the committee reported the matter to the House, and that body ordered a warrant to issue for the arrest of the relator, and to bring him before the House to show cause why he should not be punished for contempt.

In obedience to this warrant the relator was brought to the bar of the House, where the Speaker asked him the same questions which he had refused to answer before the committee; and on his again refusing to answer the questions or to produce the papers, he was adjudged to be in contempt of the House, and was ordered into custody of the respondent, to be kept in his custody in the common jail of the District of Columbia until he should purge himself of the contempt by signifying his willingness to obey the subpoena. That in pursuance of this order of the House a warrant was duly issued to the respondent, and in obedience thereto he arrested and now detains the relator.

To this return to the writ of habeas corpus the relator makes reply, in which he states that on the 17th of March, 1876, the Speaker of the House of Representatives sent his certificate to the U. S. attorney for the District of Columbia, stating therein the fact of the subpoena, and the refusal of the relator to obey the same or to answer the questions put to him touching the matter under investigation; that the district attorney had presented said certificate to the grand jury; and that an indictment had been found against the relator, on which a bench warrant had duly issued to the marshal of said District, and which had been returned unexecuted, the respondent herein declining to surrender the relator to the marshal.

That the indictment charges the relator with having committed the same offense and contempt mentioned and described in the return of the respondent herein; and that said indictment is still depending in said court.

Whereupon he prays that he may be admitted to bail to appear and answer said indictment, and on giving such bail, discharged from custody.

It is claimed by counsel for relator, that the question whether the House has power

to punish for contempt generally, need not be inquired into in the present case, as the facts are so fully set out in the return and reply thereto, as to make this a special matter; so that the only subject for inquiry here is, has the House jurisdiction to punish the particular contempt described in this case?

It is admitted by counsel that the power to punish for contempt does exist in the House, to the extent at least of self-preservation—to protect its own being; and that this power is an implied power which, it is urged, must not be carried beyond its necessity.

It is claimed that both Houses of Congress, being thus protected in their sessions by this implied power to punish for contempt, can then, by legislative enactment, provide methods and tribunals for the punishment of offenders, and for the better protection of themselves, and by this undefined and implied power; and that having so combined and passed a law, as the act of 1857 (R. S., p. 17), wherein the certain offense therein described is to become a misdemeanor, and is to be punished in a certain manner, to wit, by indictment and trial in the District of Columbia, then that that particular offense, of refusing to testify or to bring papers in obedience to the order of either House, can be no longer punished under the implied power vested in the House where the contempt is committed, but must be certified to the grand jury of said District in obedience to said law, there to be tried as any other criminal offense, by a jury. It is further claimed that this particular contempt, having been declared by said statute to be a misdemeanor, can not be punished by the House under its implied power, and again by the court under the express authority of the statute; for that would be in violation of the constitutional provision that no person shall be twice put in jeopardy for the same offense.

It is claimed by counsel for respondent that the implied power to punish for contempt is granted to the House of Representatives by the Constitution, as clearly as though it had been expressed in words; and that being so granted, it must remain where the Constitution places it.

Consequently, that no legislation can annul, divest, or delegate that power to any other branch of the Government.

That if a law was passed expressly forbidding the exercise of this power by either House of Congress, such law would be absolutely void.

That then the House having this constitutional authority, has in respect thereto all the attributes of a court, and having exercised the power, as in this case, its action is a judicial act, and its judgment can not be reviewed, revised, or questioned by any other tribunal.

That having passed to judgment, the imprisonment, as in this case, follows as due process of law; being the execution of a judgment duly rendered by a competent tribunal, having jurisdiction on the subject-matter.

That the statute of 1857 was not intended to, and does not, divest the House of this power, but only adds an additional penalty to the offense, and makes it a crime against society at large.

That therefore the punishment by the House is for the offense committed against its own person, and that by the court under the power of the statute for the offense against society.

That while the act is *one*, the offenses are *two*, and that therefore the punishment is not double.

That the offense against the House is not within the meaning of the word as used in the section of the Constitution which provides that no person shall be subject for the same offense to be twice put in jeopardy of life or limb.

That whether the matter under investigation by the House when the contempt was committed, though claimed to be for proper legislative purposes, was strictly within the scope of its jurisdiction as a legislative body or not, can not now be the subject of inquiry; that that was a question for the House to decide and not for the witness; and that the contempt was equally an offense against the House in either case.

That in a trial by the House for contempt the matter of jurisdiction is the contempt itself, and not the matter on trial when the contempt was committed.

That if the matter under investigation by the House has color of law for its support, and is not sheer usurpation of authority and an act of violence, then the courts are powerless to interfere with its judgment for contempt committed by a witness during the progress of such investigation.

That the imprisonment of the relator, while it is in the nature of a punishment for the offense, is also for the more important purpose of compelling him to testify; and in this view is remedial in its nature and can be terminated by the relator himself on his signifying a willingness to testify and to produce his papers; that while he can thus liberate himself from the restraint imposed by the House at any moment, by thus purging himself of the contempt, he has no power to relieve himself from punishment under the statute for his offense against the public; and that this shows conclusively that *two* offenses have been committed in the *one* act.

OPINION.

The consideration of this case, in the light of authority and the able and exhaustive argument of counsel, with such reflection as I have been able to bring to the aid of judgment, has reduced the questions involved in it to the inquiry, whether the House of Representatives possessed jurisdiction for punishment over the person of the relator.

If the House of Representatives had jurisdiction in the subject-matter of the investigation, and that jurisdiction was not terminated by the judgment for contempt, the jurisdiction was exclusive of the power of the writ; and it is not within the province of the law, or law tribunal, to inquire into or question it.

On the other hand, if the House did not possess constitutional power to make the investigation, or if that power, in punishment of the relator, had exhausted itself with the judgment for contempt, the rights secured to the relator and every other citizen by virtue of the writ supervene, and the jurisdiction and power of the law tribunals charged with the duty to give the writ effect, obtain.

It may be regarded in the light of unvarying authority that punishment for contempt within the limitations of the jurisdiction of the House, whether the House is to be considered as a court or not, is conclusive of judgment, and may not be inquired into by writ of habeas corpus or otherwise. It is a right inherent in the jurisdiction the tribunal, essential to its integrity and preservation, and inviolate from the interference of jurisdiction disconnected with the tribunal exercising it.

This predicate of judgment leads me first to the inquiry whether the power of the House to inflict the punishment involved in its order had been transferred by law to the adjudications of the courts.

The first effort of Congress to regulate the subject of punishment for contempt by law transpired January 24, 1857, and is found on page 155 of the eleventh volume of the Statutes at Large, in an act entitled "An act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony."

The second section of this act relates to the protection of the witness from prosecution for testimony so given, and the first and third sections are as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter before either House, or any committee of either House of Congress, who shall willfully make default, or who, appearing, shall refuse to answer any question pertinent to the matter of inquiry in consideration before the House or committee by which he shall be examined, shall, in addition to the pains and penalties now existing, be liable to indictment as and for a misdemeanor, in any court of the United States having jurisdiction thereof, and, on conviction, shall pay a fine not exceeding one thousand dollars and not less than one hundred dollars, and suffer imprisonment in the common jail not less than one month nor more than twelve months.

"SEC. 3. And be it further enacted, That when a witness shall fail to testify, as provided in the previous sections of this act, and the facts shall be reported to the House, it shall be the duty of the Speaker of the House or the President of the Senate to certify the fact, under the seal of the House or Senate, to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

Again, on the 24th day of January, 1862, by an act entitled "An act amending the provisions of the second section of the act of January twenty-four, eighteen hundred and fifty-seven, enforcing the attendance of witnesses before committees of either House of Congress." (12 Stat. Large, 333.)

This amendment is not material to the matter under consideration further than as a legislative recognition of the other sections of the statute then existing.

This is the history and terms of the action of Congress up to the act of June 22, 1874, entitled "An act to revise and consolidate the statutes of the United States in force on the first day of December, anno Domini one thousand eight hundred and seventy-three," the last expression of legislation and the present law. Sections 102 and 104 of this act are as follows:

"SEC. 102. Every person who, having been summoned as a witness by the authority of either House of Congress, to give testimony, or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars, nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months.

"SEC. 104. Whenever a witness, summoned as mentioned in section 102, fails to testify, and the facts are reported to either House, the President of the Senate or the

Speaker of the House, as the case may be, shall certify the fact, under the seal of the Senate or House, to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

The first and natural inquiry in the light of this legislation is the question, Why was it enacted in the form and substance that we find it?

Ordinarily, to a legal tribunal charged with the administration of the law, where the law is unobscured and its language definite, it is sufficient and conclusive that it is written by the lawmaker; but, inasmuch as the constitutionality and purpose of these statutes have been controverted in the argument, it may not be out of place to inquire why they were passed.

My reflection has no difficulty in finding apt and ample reasons for the interposition of the statute.

The antecedent condition of the power was latent, undefined, and unpublished. Common justice to the citizen required that it should be defined and made known.

Again, it is a truth well known to the constitutional student of the history of this Government that a large and intelligent portion of its statesmen have denied, early and late, the implied power of either House of Congress to inflict any punishment.

These appear to me ample reasons for this legislation.

These statutes have further significance. By reference to the statute of 1857 it will be seen that Congress contemplated additional penalties to the penalties that inhered in the power of the respective Houses, and so expressed it in the words "*in addition to the pains and penalties now existing.*" The present statute, for some reason in the wisdom of Congress, rejected the language commanding the additional punishment, leaving the penalty of the last amended statute as the sole punishment of the offense.

This last statute stands unembarrassed, not only as an expression of the legislative will, but as a legislative interpretation of Congressional power to inflict double punishment.

It provides, in express terms, that the offense shall constitute a misdemeanor, and shall be punished by fine and imprisonment through process of indictment and trial by jury.

To avoid the force of its plain mandate, it is objected, *first*, that if it is substitutional of the right of the House also to punish, it is unconstitutional; that it is not in the power of the united branches of the National Legislature to supersede by law the authority residing in either branch to inflict the punishment; that either branch of Congress inherits its power from the Constitution; and that it is inalienable, although alienation is concurred in by the entire lawmaking power.

This proposition invites me, sitting as a judge at chambers, to pronounce unconstitutional the solemn legislation of Congress, in deference to a latent power residing in the House, at the request of the House of Representatives which pronounced its judgment of its constitutionality by uniting in the passage of it.

If reasoning inclined me to the conclusion urged, I should hesitate long before resolving it into judgment; but it does not. The act does not imply the abnegation of power on the part of the House or of the Senate to inflict punishment for contempt; but, on the contrary, recognizes that power, and exercises it in denominating the offense a misdemeanor, and punishing it as such.

Again, it is urged that the penalty of this law is cumulative of the punishment, and not substitutional of the law and punishment that resided in the House before its passage.

The first answer to this position is that there is nothing in the language of the statute or its nature indicating that the penalty imposed by it is to operate as an addition to any penalty that might be inflicted by the House for the same offense. If there was any such purpose, it is more than doubtful whether the Constitution would permit it to be exercised.

The second clause of the fifth amendment to the Constitution is this:

"Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

It has been attempted to justify this matter by the authority that double punishment may be inflicted where the act involves two offenses; as in the case of committing a contempt in the process of committing a crime, and in the case of committing, in the same act, an offense against two sovereignties. While this is true, it constitutes no aid to judgment here, inasmuch as here the sovereignty is the same, and the offense is the same, and that is, *contempt*.

The offense against the House and the offense involved in the prosecution of the indictment being the same, a double punishment can not wait upon it under the Constitution.

That the offense is conclusively *one* is made certain by all the documentary evidence in the case.

We find the offense first described in the record of the proceedings of the committee where it occurred as follows:

"Q. State whether you have in your possession now, and have brought to the committee room, the papers, documents, memoranda, etc., referred to in the subpoena *duces tecum* served upon you.

"A. I have not.

"Q. State whether you are prepared to produce them at this sitting of the committee.

"A. I am not prepared to produce them to-day.

"Q. State whether you are willing to produce them now or at any future sitting of this committee.

"A. As at present advised I am not prepared.

"Q. You refuse to produce them before the committee in response to this subpoena?

"A. Yes, sir. I would like to state the reasons therefor," etc.

This describes that part of the offense which consisted of the refusal to produce the papers. The refusal to answer questions is described as follows:

"Q. How many members of the pool were there before you became a member? I believe you have in fact answered.

"A. Five gentlemen, besides Jay Cooke & Co., put in \$5,000 apiece.

"Q. Will you state where each of these five members resides?

"A. I do not know that I could do that. Mr. Chairman, if you will indulge me, I respectfully decline to give any testimony as it relates to these individuals.

"Q. Do you decline to state where they reside?

"A. I do not know that I could; I could upon reflection, probably.

"By the CHAIRMAN:

"Q. Would you refuse to state if you knew? We want to know whether that is one of the questions you decline to answer.

"A. I decline to answer except upon consultation with my counsel.

"By Mr. NEW:

"Q. For the present you decline to state, even if you were certain as to the locality, where they do reside?

"A. Yes, sir; I respectfully decline to state anything in relation to individuals who did business with us except upon consultation with my counsel.

"Q. Will you please state their names?

"A. That I beg to include in the same answer."

The offense, then, is made up of two things—the refusal to produce the papers, and the refusal to give the place of residence and the names of the five members of the real-estate pool.

This offense is again described in the same words, in the report of the committee to the House; in the proceedings of the House when the relator was brought to the bar of the House to show cause; in the certificate of the Speaker to the district attorney, and in the indictment presented by the grand jury.

In fact it is consented on all sides that the offense is one—one act, one fact.

But it is urged, although one offense, it meets its several punishments in the several forums for distinct purposes; that the relator is punished in the courts in the penalty of transgression; in the House, to make him testify. In one place to visit him with the penalty for what he has done or refused to do; in the other place to compel him to do.

This proposition avows the doctrine that in addition to penalties and punishments for contempt, the House has the power to coerce the recusant witness to testify. This power as distinguishable from penalty is not given by the Constitution, in express terms, either to courts or legislators; nor is it to be derived from the spirit of the Constitution, or found in the genius of our institutions, or the spirit of our people.

It is so obnoxious to the common law, as administered universally in the courts of the country, that they will not even permit confession of guilt under duress.

If by coercion is meant merely the influence that penalty furnishes to persuade the party to testify, coercion enters into the law provided for the punishment, and Congress has already provided for it by law. It is urged again, that if the power of the House of Representatives is resolved into this law for the punishment of contempts, it renders the House helpless in the way of enforcing compliance with its orders to testify.

If this be so, the reply is, that Congress is the lawmaking power of the country; and if the law that they have instituted is inadequate to the end, they have the power to make it severer; or if no law will supply the place of the inherent and undefined authority of either House, they have the power to repeal it and repossess themselves of the undefined authority displaced or defined by this statute.

The power of punishment under the statute is not in extinguishment of the constitutional right of punishment for contempt, but in definition and expression of it.

A repeal of the expression and limitation of the exercise of the power leaves the subject where the statute found it.

With the judgment of the House in contempt, its power to punish terminated, and the punishment prescribed by law supervened. In pursuance of the authority and command of the law, the Speaker certified the offense to the district attorney; and the grand jury found an indictment against the relator, which brings his body within the jurisdiction of the court charged with trying the offense stated, to which tribunal I feel it my duty to deliver him for trial.

I can not dismiss the subject without noticing the fact that the chief labor and learning expended in the argument before me, with great ability, has been devoted to the enlightenment of questions not brought into my decision. Arguments illustrative of the power, or want of power, to institute the investigation; the obligation of the citizen to bear testimony in such investigation; whether the question belongs to the House of Representatives or the courts; and whether the relator was bound to uncover the history of his private business as a contribution to the investigation.

The conclusion which I have reached as to the office of the statute renders it unnecessary, if not improper, to determine these questions now. They enter into the issue of the guilt or innocence of the relator under the indictment, and should be passed upon by the tribunal trying that issue.

For continuation of this case in another form, see decision of Supreme Court in the case of *Kilbourn v. Thompson* (103, U. S. Reports S. C., 1, p. 168, *post*).

For valuable references in debates in the House of Representatives on this case, see Record of March 28, 1876, speeches of Representatives New, Kasson, Hooker, Cox, Hoar, McCrary, Garfield, and Tucker, pp. 2009-2018; April 15, Representatives Hurd, Lynde, Kasson, Lawrence, Kelley, Hoar, and Garfield; April 17, McCrary, Hooker, Frye, Tucker, Blaine, Lord, Jones of Kentucky, Lawrence, and Hurd.

[NOTE.—A careful examination of the Journal of the House of Representatives and the Congressional Record from March 14, 1876—the date of the order of the House directing the Speaker to issue his warrant directed to the Sergeant-at-Arms, commanding him to take into custody the said Kilbourn, and bring him to the bar of the House to show cause why he should not be punished for contempt for failing to respond to the subpoena *duces tecum*—until the date of March 28, when the district attorney for the District of Columbia notified the House (see p. 542) that an indictment had been found against said Kilbourn, shows that no record appears of said select committee having made a report to the House of the contumacy of said witness for certification by the Speaker to said district attorney, or the record of such action having been taken by the Speaker under the statute without such report. The Journal, under date of March 21, 1871, shows that on motion of Mr. Tucker, Messrs. Glover of Missouri, New of Indiana, and Smith of Pennsylvania, members of said select committee, “summoned to appear as witnesses before the grand jury of the district court for said District to testify” (in said Kilbourn case) were “authorized to appear and testify under the said summons.”]

PROTECTION OF WITNESSES BEFORE EITHER HOUSE OF CONGRESS OR COMMITTEES THEREOF.

FORTY-FOURTH CONGRESS, FIRST SESSION, MICHAEL C. KERR, OF INDIANA, SPEAKER.

IN RE CASE OF WILLIAM W. BELKNAP.

On March 8, 1876, Mr. J. Proctor Knott, from the Committee on the Judiciary, to which was referred the resolution of the House directing said committee to prepare suitable articles of impeachment against William W. Belknap, late Secretary of War, reported the resolution with the recommendation that said resolution be recommitted to said committee with instructions to take further proof, to send for persons and papers, to sit during the sessions of the House, and to report at any time. Mr. Knott also reported two bills, one (H. R. 2572) to protect witnesses who shall be required to testify in certain cases, and the other (H. R. 2573) in relation to witnesses.

The said bills are herewith given in full, viz:

A BILL (H. R. No. 2572) to protect witnesses who shall be required to testify in certain cases.

Be it enacted, &c., That whenever any person shall be required to testify against his protest before either House of Congress or any committee thereof, or the Senate sitting as a court of impeachment, and shall so testify under protest, he shall not thereafter be held to answer criminally in any court of justice, or subject to any penalty or forfeiture, on account of any fact or act concerning which he shall be so required to testify: *Provided,* That nothing herein contained shall be so construed as to relieve any person from liability to impeachment.

A BILL (H. R. 2573) in relation to witnesses.

Be it enacted, &c., That every person who shall willfully absent himself from his place of residence, or conceal himself, or absent himself from the United States, or being absent shall willfully remain absent, or shall flee or attempt to do so, for the purpose and with the intent to escape the service of any lawful writ or process requiring him to appear and testify, or give evidence or produce books, letters, documents, or papers, or for the purpose and with the intent to avoid being required to testify or give evidence, or to become a witness, shall be deemed guilty of a crime punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding three years, or by both of said punishments. Nothing herein shall be construed to exempt any such person from lawful punishment as for a contempt.

Mr. Knott then addressed the House as follows in respect to the resolution and bills:

On Thursday last there was read to the House the testimony of Caleb P. Marsh, taken before the Committee on Expenditures in the War Department, and although it was not perhaps as specific in many particulars as it might have been made upon a more thorough and searching examination, it disclosed facts sufficient to satisfy the mind of every gentleman on this floor that the late Secretary of War should be at once impeached at the bar of the Senate for high crimes and misdemeanors, which by a unanimous vote of the House was accordingly done, and the evidence referred to the Committee on the Judiciary, with instructions to prepare and report to the House suitable articles of impeachment.

The committee proceeded at once to the discharge of that duty, but they had no sooner completed it than they were confronted by a fact with which every reader

of the daily papers from Cape Cod to the Golden Gate and from the Bay of Fundy to the Rio Grande was apprised, namely, that the witness Caleb P. Marsh had fled the jurisdiction of the United States. What may have been the immediate cause of his precipitate flight I will not undertake to say. I will say, however, that, having testified before a committee of this House in obedience to its subpoena, and having been guilty of no contempt of the House, and having given no indication of an intention on his part to commit any such contempt, it was beyond the power either of the Committee on the Expenditures in the War Department or of the House itself to have ordered him into custody or in any manner to have restrained him of his liberty without being guilty of almost as great an outrage as that charged upon the Secretary of War, that of arbitrarily depriving a citizen of his liberty without authority of law.

Upon the facts to which he testified becoming public, however, he could have been taken into custody and held in pursuance of law by another Department of the Government. I will not insinuate that the distinguished head of the Department of Justice or the district attorney for the District of Columbia was not aware of the proper mode and manner of securing the detention of his person.

Mr. PAGE. Will the gentleman allow me to ask him a question?

Mr. KNOTT. I decline to yield for the present.

Mr. PAGE. Does not the gentleman know that this man had escaped before these officers had official knowledge of it?

Mr. KNOTT. I will say, however, that an ordinary county attorney who, having knowledge of the commission of a crime which by law it was his duty to prosecute, would blazon to the world his intention of arresting and bringing to punishment all parties concerned in it, so that they might have full notice of it, instead of quietly going to the proper officer and procuring a warrant for the arrest of the guilty parties, instead of giving them notice to flee—I would say he should be dismissed from office on account of incompetency. But this by the way.

With the witness Marsh beyond the jurisdiction of the Government, we know, as every lawyer on this floor and throughout the country who is familiar with the facts must know, that a prosecution based upon the facts disclosed by his testimony could not be successfully maintained without other evidence. The necessity, therefore, of bringing that witness back or procuring other witnesses by whose testimony the charge might be substantiated became at once obvious. But how are we to get him?

It is impossible for Marsh to be brought back under our extradition treaty with Great Britain. The Webster and Ashburton treaty of 1842, which contains all the stipulations on that subject, provides upon this point as follows:

“It is agreed that the United States and her Britannic Majesty shall, upon mutual requisition by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of false paper, within the jurisdiction of either, shall seek an asylum or shall be found within the territory of the other.”

It is obvious to most minds that the charge against the witness Marsh, even were he indicted, does not fall within the catalogue of offenses herein enumerated for which a party may be extradited.

It was, however, suggested on yesterday by the distinguished gentleman from Maine [Mr. Blaine] that Marsh might be indicted for robbery and extradited upon that charge. The suggestion appeared to me to be rather singular, coming from so distinguished an authority. Even if the gentleman's legal investigations have carried him so far that he has forgotten the lessons he learned when studying the elementary principles of law, he could have looked into Webster's Unabridged Dictionary and found that robbery consists in taking from another his personal property by violence or force, “the forcible and felonious taking from the person of another any money or goods, putting him in fear,” etc.

When asked if Mr. Marsh had been guilty of robbery, he suggested that he had been in a “conspiracy to rob several companies of U. S. cavalry.” The gentleman from Maine may be right, and Mr. Marsh, after all, may have been guilty of “robbing several companies of U. S. cavalry,” though I hardly think it very complimentary to their courage to suggest that several companies of U. S. cavalry were put in bodily fear and stripped of their property by a single man.

It is perfectly plain, therefore, that the witness can not be brought back under this extradition treaty. In fact, as the law now is, there is but one method by which he can be brought back; but in my opinion that is an infallible one. And, moreover, it is in the power of one man in the Government to have the witness Marsh in Washington within forty-eight hours if he so desires. The plan by which he can effect that object so much to be desired at this time may not be known, perhaps, to the Attorney-General, though I rather suspect it is. It is a very simple one, and one which has been known to the profession and practiced from the earliest period in

the history of our jurisprudence. What is it? Simply this: If the President of the United States really desires honestly and sincerely that his late Secretary of War, whose enormous crimes have disgraced his own administration and caused the cheek of every American citizen to mantle with shame, shall be brought to justice, shall be indicted and convicted before a jury, as well as successfully impeached, all he has to do is to give his assurance to the witness Marsh that, if he will come before the tribunals of the country and tell "the truth, the whole truth, and nothing but the truth," he shall be free from arrest; and my word for it, Marsh will be here within forty-eight hours after he shall have received it.

But he is not coming without some such assurance; and there is no sane man in his situation who would after what has been heralded through the press all over this country. And what is that? The distinguished gentleman from Maine very emphatically denied on yesterday that there had been any Cabinet meeting upon the subject of prosecuting Mr. Marsh or Mr. Belknap. He stated that the so-called Cabinet meeting was "manufactured by the newspapers," and that the subject of prosecuting any witness against Belknap had not been discussed by the Cabinet at all.

The gentleman from Maine knows better than I do about that matter, I suppose, but I find the following in the National Republican of last Saturday morning, and I believe that paper is the home organ of the administration:

THE SESSION OF THE CABINET.

"Yesterday's Cabinet session was marked as being one of the longest, as well as the most earnest and distressing, meetings that has taken place during the entire period of President Grant's administration. It was well enough understood that but one topic would engross its attention. While all the members of the Cabinet have been positive in their condemnation of Mr. Belknap, there has been the most dispassionate consideration of his offense. There has been no manifestation of anything beyond an assumption of the full measure of responsibility the administration feels it incumbent to exhibit in the case.

"All the public Departments were represented, Mr. Robeson answering for both the Navy and the War Departments, Secretary Fish, Secretary Bristow, the Postmaster-General, the Attorney-General, and the Secretary of the Interior completing the list of the President's official advisers. The President, sitting at the head of the long table in the executive office, addressed the Cabinet on the serious matter that everyone felt should at once be met, and stating his indisposition to take any step which might or could be construed into a desire to persecute anyone, and indicated at the same time very clearly and with no little emphasis his entire determination that the full punishment provided for in the laws should meet all offenders. In the President's expressions the complete essence of his famous and sententious remark, 'Let no guilty man escape,' met easy recognition. Upon the point as to what the duty of the administration is, there was found no difference of opinion in the Cabinet. It is the saddest duty and the sorest trial that has yet had to be met, but with all that it will be met, and without a single moment of unnecessary delay.

"As the law officer of the Government the Attorney-General was called upon for an expression of what was the proper method of proceeding in the institution of the criminal proceedings against Gen. Belknap and those who have been associated with him in these sickening corruptions, for, as stated in this journal yesterday—"

That was on Friday.

"the President had no idea of making discriminations in the trial of offenders, and those who have been *particeps criminis* with the ex-Secretary will be certain to feel their proportionate share of the odium and punishment their faults bring with them."

Mr. BLAINE. Will the gentleman allow me to ask him a question right here?

Mr. KNOTT. After what occurred here yesterday the gentleman from Maine must excuse me. In this connection I will remark that what struck me most of all the incidents connected with the famous Beecher scandal was the generous disposition of Mrs. Moulton to "give the old man a chance." I would love above all things to give the gentleman from Maine a chance, because he seems never to have a chance upon this floor. [Laughter.]

Now this Cabinet meeting may not have taken place; the gentleman from Maine knows better than I do about it; but I will read further from this account as given in the Republican:

"The determination was reached, after some discussion on the peculiar points of the bribery case, so different as they are held to be from an ordinary case of this character, to commence criminal proceedings just as soon as the facts attending the matter can be put in shape to be sworn to. This will be given immediate consideration by Judge Pierrepont, who will probably have an interview to-day with U. S. Attorney Wells in relation to the unhappy business."

Now, gentlemen on the other side know more about this than I do; but whoever penned this article knew more about it than any of us perhaps, for upon the very same day that this appeared in the Republican, and within a few hours afterward, I received from the Attorney-General a letter, from which I will read:

"DEAR SIR: The bearer is Hon. H. H. Wells, U. S. attorney for this District. He calls upon you in relation to recent violations of the statutes by Gen. Belknap and others. We have examined the law, and there is no doubt that they have grossly violated it if reports are true."

I read this simply by way of showing a singular coincidence at least. But whether there was a Cabinet meeting or not, here is notice given to the world, notice especially given to Mr. Marsh and all others who may have had any complicity in these corruptions, "just so sure as you exhibit yourselves in the investigation of these transactions the same punishment shall be meted out to you as to principal offenders." Under these circumstances how can we expect that Marsh will come back here, or that any other witness who values his own personal liberty will ever venture to testify in this matter without having some assurance of immunity.

But the gentleman from California [Mr. Page] asked me a while ago whether the law does not already give this immunity. I answer, no. I will read the section to which he refers, section 859 of the Revised Statutes, which is as follows:

"No testimony given by a witness before either House, or before any committee of either House of Congress shall be used in evidence—"

Mark the language—

"shall be used in evidence in any criminal proceeding against him in any court except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within said privilege."

Now that is precisely the English rule. Nevertheless, in England as here, a witness can decline to give an answer, notwithstanding his evidence can not be used against him in a criminal prosecution, because his answer may indicate other evidence that will be competent against him and upon which he may be convicted. Consequently, in the British Parliament, for a great number of years the practice has been in such cases to pass for each particular case a special act of indemnity, as stated in the work on the Law and Practice in Legislative Assemblies, by L. S. Cushing, section 1005, which I will read:

"In the House of Lords, although the same power clearly exists to compel the answer of a witness to criminate himself, and although the rule above mentioned is recognized, namely, that evidence taken at the bar can not be used against a witness, yet, as such evidence may lead to the discovery of other evidence sufficient to convict them, the protection afforded by the rule alluded to—"

And that is the one embodied in the Revised Statutes—

"does not seem to be regarded as adequate; and it has accordingly been the practice for many years, when the evidence of such witnesses is about to be taken, to pass an act (which is of course agreed to by the Commons) to indemnify them in the fullest manner against the consequences of their evidence."

By the act of Congress passed in 1857 it was provided that—

"No person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture for any fact or act, touching which he shall be required to testify before either House of Congress or any committee of either House as to which he shall have testified, whether before or after the date of this act; and that no statement made or paper produced by any witness before either House of Congress or before any committee of either House shall be competent testimony in any criminal proceeding against such witness in any court of justice."

Now, with these facts before the committee, that the only witness by whom the charges preferred against Gen. Belknap upon which they were instructed to prepare articles can be established, either before a court of impeachment or in the district court upon an indictment, was beyond the jurisdiction of the United States, and that he probably would not come back without indemnity, the question presented itself to your committee what it was most advisable for the House to do, informed as they were and believing as they did there was an abundance of other testimony which might be procured by which those charges and perhaps others could be established. And after mature deliberation they reached the conclusion that to present articles of impeachment to be acted upon, and finally paraded before the Senate by the House, with a moral certainty that there would not be evidence enough to sustain them unless Marsh can be brought back or the facts shown by other evidence, would render them ridiculous in the eyes of the world as well as contemptible in their own estimations.

We deem it, therefore, advisable that the articles of impeachment, which we have prepared in obedience to instructions from the House, should not be presented until either the attendance of Marsh can be procured or the Committee on the Judiciary have had time to get other sufficient evidence to sustain them. We did not feel, and I do not believe there is a gentleman in this House who would feel disposed to

see the House place itself in the ridiculous attitude of parading charges without being prepared to prove them, when it is apparent, or we have sufficient grounds to believe, that abundant evidence with proper opportunity may be procured to sustain them. The committee, therefore, make this report, asking that the matter be referred back to them; that they have authority to hear testimony, to send for persons and papers, and to report at any time; and that in the meantime, in order to facilitate this investigation and to facilitate other investigations, they report the bill indemnifying witnesses who shall be required in the interest of the Government to testify, from all liability to answer criminally in any court of justice, and against any forfeiture or penalty concerning any fact or act about which they may be called to testify.

I now yield to my colleague on the committee from Wisconsin [Mr. Lynde].

Mr. LYNDE. Mr. Speaker, the committee in this report have asked the House to recommit all matters pertaining to this impeachment, that they may be authorized to take testimony, to send for persons and papers, to report articles of impeachment to the House. It seems necessary from the persistent inquiries and demands of members upon this floor that articles should be reported at this time, subject to the order of the House. But, Mr. Speaker, why is it demanded that this hot haste should be made in this great case, involving the honor of the nation? Why is it required that articles of impeachment should be brought to the House on the testimony of Marsh alone—a single witness? From the testimony already presented to this House, it is apparent that there are other witnesses connected with that very transaction whose testimony is material and important in this case. And, sir, there is no precedent upon the House records of a committee being required to present articles of impeachment until after they had been authorized to send for persons and papers and to take testimony upon which to draw those articles of impeachment.

Mr. Speaker, for one I regret that there is so much manifestation of party feeling on this subject. Do gentlemen suppose that they can make this a party matter; that any member upon this floor can ride into the presidency upon the manner in which this investigation shall be conducted? Our national honor is involved in the mode in which this prosecution is presented, in which this investigation is conducted, in which the trial before the U. S. Senate shall be had. Mr. Belknap is entitled to a fair and impartial trial. Party feelings ought not to control that trial; neither should they control this House as to the manner in which the impeachment articles should be presented to the Senate. The first impeachment case that came before the U. S. Senate was that of William Blount, a Senator of the United States. The attention of the House was called to the subject by a letter from the President of the United States, which was presented on the 7th of July, 1796. On the 8th of July, upon the information furnished in that communication and a letter which was transmitted with the President's message to the House, the House passed a resolution impeaching William Blount. A committee was appointed to present that impeachment to the Senate. On the same day, the 8th of July, 1796, the Senate expelled William Blount from that body, and on the same day, the 8th of July, 1796, the House passed this resolution:

"Resolved, That a committee be appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States impeached by this House of high crimes and misdemeanors, and that the same committee have power to sit during the recess of Congress and to send for persons and papers and records."

This committee reported to the next Congress. Congress met on the second Monday of November, and the articles of impeachment were reported to the House on the 25th of January, 1797, and adopted, after discussion, on the 29th of January of that year. Here were more than six months given to the committee after the impeachment was presented to the Senate to investigate, to prepare the testimony, and to prepare the articles of impeachment before they were presented to the Senate.

The next case was that of Judge Pickering. He was impeached before the Senate on the 3d of March, 1803, and a committee was appointed with power to send for persons and papers on the 20th of October, 1803, and on the 27th of December following, the committee reported, and reported articles of impeachment. There were nine months after Judge Pickering was impeached before the Senate before the articles of impeachment were adopted by the House or presented to the Senate.

There have been but five cases, I believe. I have not investigated particularly into that subject, but my impression is that there have been but five cases of impeachment before the Senate of the United States since the formation of this Government.

The next case was that of Judge Chase. There was a resolution of inquiry introduced into the House on the 5th of January, 1804. A committee was appointed to investigate, and on the 12th of March the committee reported in favor of an impeachment. The testimony having been taken in full and at great length, it was

reported to the House by the committee who was specially directed to investigate the subject, and on the 26th of March thereafter—fourteen days—a committee reported to the House articles of impeachment for its consideration.

Now the charges against Judge Chase were charges of record, requiring but little investigation or very little testimony outside of the records before the court. But Congress adjourned when those articles of impeachment were reported, and met again on the 30th of November, 1804. After Congress met, Mr. Randolph, if I recollect aright, called the attention of the House to the articles of impeachment which had been reported at the previous session, and asked that they be recommitted to the Committee on the Judiciary, and they were so recommitted before they were adopted by the House, and they were adopted several days after that date.

The next case to which I call the attention of the House is that of Judge Peck. The memorial was presented to the House on the 9th of December, 1826. The House referred it to the Judiciary Committee. On the 15th of February thereafter, the Judiciary Committee of the House reported, recommending that the petitioner have leave to withdraw his memorial; which leave was granted. It was not presented at the next session, but at the session of Congress in 1828 it was again presented and referred to the Committee on the Judiciary. I read from the preliminary proceedings in the trial:

“The following session, Mr. McDuffie, on the 15th of December, 1829, repeated the motion he had made at the last Congress, and the petition was once more referred to the Judiciary Committee, which now consisted of Messrs. Buchanan, Wickliffe, Storrs, of New York, Davis, of South Carolina, Bouldin, Ellsworth, and White, of Louisiana. These gentlemen took up the subject with earnestness and on the 7th of January ensuing, their chairman, Mr. Buchanan, moved that they be authorized to send for persons and papers. The motion was agreed to; witnesses were sent for and examined, and on the 23d of March following, Mr. Buchanan made a full report of the proceedings of the committee, exhibiting an abstract of the Soulard case (which had given rise to the proceedings), together with the depositions of Luke Edward Lawless, the memorialist, etc.”

Mr. Speaker, I have presented these authorities and precedents to this House for the purpose of showing that there is no necessity for this hot haste, or that articles of impeachment should be presented upon the testimony of a single witness after impeachment has been made by this House. It is a grave question, it is a national question, which should receive due consideration, and every step in the proceedings should be taken upon due deliberation. If Mr. Marsh had not left this country, if Mr. Marsh could be had as a witness to-day, I do not think this House would do justice to itself or to the country if it proceeded in this impeachment case on his testimony alone. It is possible that every member upon this floor may think that there is testimony enough in that case to impeach Mr. Belknap; but that is not the question. We have impeached Mr. Belknap of high crimes and misdemeanors in office, and it is our duty as a House of Representatives to investigate into all the high crimes and misdemeanors of which he has been guilty while he has been in office, and which can come within our investigation.

Therefore, Mr. Speaker, I do insist that these articles of impeachment now reported by the Committee on the Judiciary should be recommitted to that committee, with authority to take testimony, send for persons and papers, and be authorized to report articles of impeachment to this House at such time as they may think best.

The previous question was ordered on the resolution and the same was agreed to. The bill (H. R. 2572) to protect witnesses, etc., was then taken up and after a miscellaneous debate, largely political (*see* Record, pp. 1564–1572.), was passed by, yeas, 206; nays, 8. The other bill (H. R. 2573), in relation to witnesses, was recommitted to the Committee on the Judiciary and not thereafter acted on. The said bill (H. R. 2572), to protect witnesses, etc., was referred in the Senate to the Committee on the Judiciary, which committee, on April 11, reported the same adversely, the report being made by Senator Edmunds; Senators Thurman and Stevenson submitting their views as a minority and proposing a substitute for said bill. The said report and minority views are herewith given:

[Senate Report No. 253, Forty-fourth Congress, first session.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2572) entitled “An act to protect witnesses who shall be required to testify in certain cases,” respectfully report:

That, in their opinion, the bill ought not to be passed.

Upon the principles of constitutional consideration, and of expediency involved in questions of this character, the bill seems to us to be open to many fatal objections.

It provides in substance that every criminal, from the traitor down to the backwoodsman who sells a glass of alcoholic liquor without a license, who shall testify, against his protest, before either House of Congress or any of its committees, shall be relieved *ipso facto* from all punishment for his crime, in respect of any fact or act concerning which he shall be required to testify. The whole body of offenders against the law are thus enabled to escape if they comply with the condition named.

The standing committees of the two Houses of Congress number about seventy-five, and they are at present composed of one political party in one House, and another in the other. The special committees and subcommittees at present existing (and which may be multiplied to any extent at the pleasure of either House) are understood to number about fifty; so that the bill extends a general invitation to all the criminals in the country to avail themselves, if they can, of the friendly or mistaken offices of some one of these one hundred and twenty-five committees and subcommittees, to testify to anything, no matter what, touching their own guilt, as the easiest possible means of atonement or escape from justice. It is not required that the testimony of criminals shall be material to any inquiry ordered by either House. It is not required even that it shall have any relation, necessary or incidental, to any subject under consideration. Under color of testing the recollection of witnesses, they may be invited to refer to any misdeed in respect of which it will be convenient to escape the impartial administration of the law. It is not even required that they shall tell the truth, and it is not provided that, if they commit perjury, they shall not avail themselves of this very statute to escape its just punishment.

The bill does not make it clear, even, that the witness shall testify as to the crime he is to be pardoned for. It simply says if he shall be required to testify, "and shall so testify under protest," he shall not be punished, etc., "on account of any fact or act concerning which he shall be so *required to testify*." It omits to declare that he shall testify concerning the crime for which he gets pardon; but it gives him freedom from punishment if he testifies about anything, and is *required* to do so, whether he does or not, about the committed crime.

Passion, prejudice, private animosity, political intrigue, corruption—everything that is hurtful to good government—may enter the open door with a little assistance and secure absolution under the protection of law. The committee are impressed with the hazard of dispensing the pardoning power, whatever may be its necessity, at large and in advance to offenders described only by classes. The power to pardon is especially and essentially a matter of discretion. Its exertion in every case should depend on all the facts exactly ascertained and justly weighed. Between two culprits falling within the description found in the bill, and within any general terms which might be employed, there might be, and naturally there would be, wide differences in respect of considerations on which an application for clemency should hinge.

Not only the man himself and the nature and aggravation of his guilt, and all the circumstances bearing on him and his act, but the occasion, the public concern, the advantage to be derived from giving immunity to one, or more than one, inculpated—all these elements must be taken into the account in granting or refusing pardon. It is quite obvious that all these considerations must, to a degree, be ignored or dismissed if a permanent, inflexible permission is to be held out to every comer alike who chooses to avail himself of it without let or hinderance, save only the uncertainty of persuading a committee, or some of its members, to call him as a witness. Reason, aided by experience, seems clearly to teach that pardons to individuals should be granted or withheld in the light of all the facts as they appear in each instance. Such an administration of the pardoning power, however it may fall short of its highest objects, will not tempt or embolden the weak or the wicked to commit theft or perjury, trusting for escape to a door set and kept open in their view. Should legislation be deemed the proper vehicle for pardon, it is believed that the proceeding should be by special act in each case.

We do not think it necessary to amplify discussion upon the bill as it was sent to the committee. It is so objectionable and dangerous that the committee are all of the opinion that it ought not to become a law as it stands. But in view of the fact that the coordinate branch of the legislative department of the Government, whose opinion is entitled to the highest respect, has thought some legislation upon the subject necessary, the committee have considered the following proposition submitted by one of its members as in general the best substitute for the bill, if any such general legislation can be found constitutionally rightful or expedient, namely:

"That whenever any person shall be called to testify before either House of Congress, or any committee thereof, or before any joint committee of the two Houses, touching any charge of malfeasance, misfeasance, or corruption of any public officer, clerk, or employé of the United States, or of any department of the Government, or

of any Senator or Representative in Congress; or touching any charge of bribery, or attempt to bribe any such officer, clerk, or employé, Senator, or Representative; or before the Senate of the United States when sitting as a court of impeachment; and the person so called to testify shall refuse or decline to answer any question put to him upon such inquiry, investigation, or trial on the ground that his answer would or might criminate, or tend to criminate, him, or might subject, or tend to subject, him to some penalty, forfeiture, or criminal punishment; and the witness shall, nevertheless, be required by either House of Congress or by the Senate sitting as a court of impeachment, to answer the question or questions put to him; and he shall thereafter truly and fully answer such questions, and make a true and faithful discovery and disclosure of all matters within his knowledge pertaining to the subject under investigation by either of the committees aforesaid, or by either House aforesaid, or by the Senate sitting as a court of impeachment, then, and in such case, such witness shall not be held to answer, criminally, in any court of justice, or be subject to any penalty or forfeiture on account of any fact or act concerning which he shall have been required to testify as aforesaid, and he shall be entitled to a certificate from the President of the Senate or the Speaker of the House setting forth the facts aforesaid, which certificate he may plead in bar of any indictment or prosecution in any court of the United States for any fact or act concerning which he shall have testified as aforesaid, and such certificate shall be admitted in evidence as proof of the truth of such plea, and the plea, when proved, shall constitute a valid defense to such indictment or prosecution: *Provided*, That nothing herein contained shall be so construed as to exonerate such witness from criminal prosecution and punishment for any perjury committed by him in giving his testimony as aforesaid."

The committee, after the most patient and careful consideration, are of the opinion that this proposition is wholly inadmissible.

It is proposed to declare by permanent law that any person who, refusing to testify before either House of Congress, on the ground that his answer might tend to criminate himself, shall by either House be required to testify and shall accordingly testify truly touching any charge of malfeasance, misfeasance, corruption of, or bribery of, or attempt to bribe, any officer, clerk, or employé of the United States, or any member of Congress, such person so testifying shall be thereby discharged from all criminal liability in respect of any act or fact concerning which he shall have been so required to testify.

It will be seen that the enactment would operate only upon persons who at the time of giving their evidence were criminally guilty of some one or all of the crimes above named, or others referred to the testimony concerning them. And as to such persons each House of Congress, on its sole authority and in its sole discretion, is authorized to say that they shall not be amenable to the law for such offenses.

This it appears to us is nothing other than a legislative declaration of pardon of all such criminals, of the classes named, as shall be selected by either House. It is natural to presume that the refusal to testify upon the ground of criminal exposure would of itself excite and stimulate curiosity or desire on the part of either House for a full disclosure, and that in every case of such refusal the witness yielding to the demand for further testimony would acquire the immunity from punishment for his own misdeeds which he must so much desire.

The question at once arises, is such legislation warranted by the Constitution of the United States?

The power of Congress is not, like that of the British Parliament, generally and substantially omnipotent. All the powers of our Government are limited to specific subjects and measured methods named in a written Constitution. No power not delegated exists. And in respect of the powers delegated, the fundamental principles of the framework of our Government, as well as the form of the Constitution, require and create a clear and absolute division and separation of powers.

The legislature is to make laws that shall provide for the punishment of all crimes of each class and kind equally, and without any exception or reservation that does not apply to all offenders alike, either as to time, place, or person. It must, indeed, define offenses and affix their punishment, but it can not provide that the same offense once committed by two persons shall as to one be punished and as to the other not, according to the discretion of either branch or the whole of the legislative power.

It is the exclusive province of the judicial power to try and determine the guilt or innocence of persons supposed to have violated the law, and to pronounce the sentence affixed by law to the offense.

The power and duty is devolved upon the Executive to "take care that the laws be faithfully executed." And there is confided to him in express terms the power "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." This power has no other limit than its nature implies. The Executive may exercise it before, as well as after, the conviction of the offender, and

upon such conditions as seem to him for the public good; and, as has been frequently held by the Supreme Court, it can not, in respect of substance, be controlled by legislation. And it has been intimated by that high authority that it includes what has been known in political history as amnesty, although it may be questioned whether amnesty does properly fall under the designation of pardon, and rather to grant it is not a political power that may, in respect of subjects to which it applies, be exercised by the legislative department of the Government?

In the convention that framed our Constitution the subject of pardons appears to have received careful consideration. It was proposed that the executive power to grant pardons should only be exercised "with the consent of the Senate," which was negatived by a vote of eight States against one. Then it was proposed to limit the executive power to pardon "after conviction." To this it was objected "that pardon before conviction might be necessary in order to obtain the testimony of accomplices," and thereupon the proposition was withdrawn. Still later it was proposed to exempt from the executive power of pardon cases of treason, on the ground that the President himself might be guilty, and that traitors might be his own instruments; to which it was replied that it would be better that "there should be no pardon for treason than let the power devolve on the legislature." And it was urged that the power was best placed in the hands of the Executive; that if he were himself a party, he could be impeached and punished; and that it would be inconsistent with the constitutional separation of the executive and legislative power to let the prerogative be exercised by the latter; that a legislative body is utterly unfit for the purpose; that they are governed too much by the passions of the moment. This argument was enforced by the instance of the outbreak in Massachusetts, of which it was said that "one assembly would have hung all the insurgents in that State; the next was equally disposed to pardon them all." On the force of these objections the convention refused to except cases of treason by a vote of eight States to two. (Elliot's Debates, vol. 5.)

All the three before-mentioned classes of powers were studiously separated in the Constitution, and none of them, so far as the committee is advised, were conferred concurrently upon different departments of the Government. Does it not follow, then, that the legislative department has not the power under the Constitution to grant pardons? And it is clear that if it has not the power to do so directly it has not the power to do so indirectly, or by delegation. It is, indeed, manifest that the power of pardon delegated to either branch of the legislative department, acting separately, would be threefold more dangerous than its exercise by the legislative power, which can only act by the concurrence of the two branches, and usually with the approval of the Executive.

It may be admitted that the legislative power may, in general, pass whatever laws are necessary or incidental to the administration of justice, or to the exercise of any of the powers granted by the Constitution; but in so doing it can not invade the powers of any other department. If it were otherwise, it could absorb the functions of all the departments of the Government, and destroy the Constitution by the legitimate exercise of the very powers granted to preserve it.

If the legislative power can say that A shall not be punished for a crime if he give evidence, can it not also say that he shall not be punished if he will lend money to the United States? For the power to borrow money is as broad as the power to provide for the administration of justice; and the means employed are no greater or different encroachment upon the pardoning power in the one case than in the other.

The Constitution confers the power to grant pardons upon the Executive; does it also confer it upon the legislature?

A pardon is correctly defined by the Supreme Court to be "an act of grace proceeding from the person intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed." It may be granted before conviction as well as after, and upon any conditions considered by the pardoning power to be appropriate. In its nature, substance, and form it is an exemption of the individual upon whom it is bestowed from the punishment the law inflicts for the crime he has committed. And whenever this exemption is referred to by law writers, or in statutes in connection with parliamentary proceedings in Great Britain, it is usually and naturally styled, although bestowed by the legislature, a pardon. (Blackstone's Commentaries, Sharswood's edition, chapter 4, 330, and note; *ib.*, 400, and note.)

It is precisely this, neither more nor less, that the proposed law is to do. It is to declare that the guilty person "shall not be held to answer in any court of justice or be subject to any penalty or forfeiture," etc., for the crime he has committed. The definition of the Supreme Court above stated and the sentence just quoted are exact equivalents.

It appears to us, then, that, beyond just dispute, the scheme under consideration proposes to grant pardons for municipal offenses by an act of legislative power, or else to delegate the power to grant such pardons to each house of Congress, and to

substitute the certificate of the President of the Senate or the Speaker of the House of Representatives for the sign manual of the President of the United States.

That in whatever language a statute may be framed its purpose and constitutional validity must be determined by its nature and reasonable effect, is not only a just rule of interpretation, but is the settled and unanimous judgment of the Supreme Court. (*Henderson v. Wickham*, October term, 1875.)

And it is equally clear in reason and well settled by authority that the lawmaking power can not, in aid of the execution of its constitutional duties or of the exercise of its constitutional powers, make use of any means not also within its constitutional power.

Congress may regulate commerce, but it can not make a treaty with a foreign power, however needful a treaty may be to the due regulation of commerce. It may coin money, and to that end may establish a mint, with such officers as it deems proper, but it can not appoint or remove any one of the officers so provided for, however essential it may be that a total change in the management of the mint shall be effected.

So Congress, by either of its Houses, may make investigations into the administration of all branches of the Government, but, for that purpose, it can not appropriate any of the powers belonging to the Executive or the judiciary. It is not enough that the means resorted to are naturally appropriate, they must be constitutionally appropriate, and, to be so, they must not be taken from the mass of powers confided to the Executive or the judiciary.

If Congress, in the choice of means for the exercise of its admitted powers, can borrow executive power, so the Executive in the same way can appropriate legislative power whenever it may be naturally convenient to the discharge of his constitutional duties, a power that no one, we think, will admit.

Mr. Madison, in No. 46 of the *Federalist*, states the point as follows:

"The entire legislature, again, can exercise no executive prerogative, through one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of the third, can try and condemn all the subordinate officers in the executive department."

Upon these considerations, thus briefly stated, and others incidental and collateral, we think it at least open to great question whether the power of pardon, which we think includes all indemnity against punishment for committed crimes under the Constitution, rests, in any degree, in the legislative department of the Government. Beyond this we need not go at this time.

But if it could be established that the legislation proposed is within the constitutional power of Congress, the expediency of its adoption remains to be considered. By the existing law (although its propriety has been greatly questioned by eminent gentlemen of all parties) a witness is bound to testify before committees of Congress, although his evidence may tend to criminate himself; but the evidence can not be used against him. It is not necessary now to consider the ground of this provision. We are not called upon to express any opinion upon it.

The constitutional power of the Executive is confessedly adequate to every case that has arisen or may arise in which the ends of justice may require that some criminals shall be relieved from punishment in order that the truth may be ascertained as to others.

However dangerous the use of the testimony of such persons may be, and it is certainly liable to very great abuses, it is the necessary practice of all governments to make use of it, under various limitations and safeguards, for the protection of the innocent against what Sir Matthew Hale, in commenting on the subject, styled "the false and malicious accusations of deperate villains."

The question, then, is whether it is expedient to provide by law that the power hitherto exclusively exercised by the Executive Department of the Government (with one exception, hereinafter noticed) since its foundation, of granting pardon and indemnity, according to its responsible discretions, for the purpose of obtaining evidence against persons accused or suspected of crime, should be also exercised, in the cases named, by each House of Congress at its discretion?

The committee have no information that the Executive has at any time in the history of the Government failed to exercise this delicate and dangerous power whenever the purposes of justice or of investigation seemed to require it; and no statements have come to us that such has, in any instance, been the case.

In a very recent and notable instance, the present Executive has, it is understood, of his own motion, exercised this power in aid of an investigation by the House of Representatives in inquiring into the conduct of a high officer of the Government, whose official position placed him by law in close relations with the heads of Departments, and with the President. It is, therefore, difficult to believe that the Executive will, in any future case, refrain from exercising his constitutional power, on all proper occasions, for these purposes. Nor is it known to the committee, or believed, that any case has recently occurred in either of the houses or their com-

mittees in which any witness has refused to give evidence on the ground of self-crimination in the face of the statute that makes such evidence as to him as if it had never been given.

In short, we know of no existing or anticipated mischief calling for a measure of this character, even were the principle of the proposed legislation the most wholesome and wise.

But it appears to us that especially under our system of Government, and its division of powers (as well as for the general welfare) for the preservation of the liberty and other rights of the citizen against the prejudice of party, the heat of faction, and the cruelty of ambitious cabal, such legislation would violate our most cherished and essential principles of civil polity. The direct exercise of the pardoning power by the whole body of the legislature in the form of a law approved by the Executive would, we think, be bad; and that the delegation of such a power to each House of Congress to remit at its discretion the punishment of acknowledged criminals would be much worse.

The idea that the law-making power may also, through the forms of law, provide that each of its branches may dispense with the general laws in respect of certain classes of criminals, is repugnant to all just notions of constitutional government; nor does it cure the error or mitigate the evil to say that each House of Congress is to do it only in the interests of justice and good government, for each House must of itself be the sole judge as to when the interests of justice and good government demand its exercise; and it is thus exposed to all the evil influences of favor, prejudice, intrigue, and ambition, to say nothing of others that human experience has shown to be inseparable from the acts of large bodies of men controlled by nothing but their own discretion. If the sense of personal responsibility on the part of members be a sufficient safeguard, then, on the same principle, each House of Congress might properly be allowed to determine in all cases, against whom the laws should be enforced, and what favored persons should have immunity. Such a rule in its natural and logical results would soon put an end to all government of law.

In the case of the exercise of Executive power of this character, the exalted station and sole responsibility of the Chief Magistrate furnishes considerable security, and he is himself, unlike the members of either House of Congress, amenable to the law for any conscious abuse of his powers, and may be punished, like any other official, for a corrupt dereliction of duty; so that in his case an effective check exists against abuses; but in the case proposed there would be none whatever.

Both branches of Congress are supposed to be influenced by and to reflect the popular will—the Senate the general and average current of public opinion, measured by considerable periods of time, and the House of Representatives the biennial, and perhaps it might be said the daily, state of popular opinion. Under such conditions, to give either House the power to dispense with all punishment for a large class of offenses would be, as we think, to invite crimes, accusations, corruption, and injustice, rather than to repress them. The profound writer and patriot, Dr. Lieber, states a maxim of political truth that can not be too often repeated when he says that “in viewing evils and endeavoring to find remedies, we must carefully avoid creating equally great or greater ones,” and that “one of the main ingredients of civil liberty, and at the same time one of its greatest blessings, is the protection against individual passion, violence, views, opinions, caprice, or well-meant but disturbing influences—the supremacy of law. This, however, involves the condition that the laws once made must be administered by others than those who made them, or are making new ones. Without it the law ceases to be a guarantee.” Lord Brougham, in his work upon the British constitution, sums up his observations upon the subject of relieving criminals from the legitimate consequences of their crimes with these impressive words:

“It seems hardly necessary to add that no interference of parties interested, politically or personally, should ever be permitted with the exercising of this eminent function of the executive government. Absolute monarchies offer to our view no more hideous feature than this gross perversion of justice; nor do popular governments present a less hateful aspect, when they suffer the interference of the multitude, either by violence, or through the press, or the debate, or any other channel in which clamor can operate to defeat the provisions of law.”

Mr. Macaulay says, upon the same subject, that he “would rather intrust it in the hands of the very worst ministry that ever held office than to allow it to be exercised under the direction of the very best House of Commons.”

The committee is not ignorant that the British Parliament has in several special instances passed acts of a character supposed to be similar to this, but the practical analogy entirely fails when we perceive that those acts were either applied to a trial for a specific offense of some one named offender, or an inquiry into a particular election in a particular place, or (as in the only instances of permanent enactment) devoted to the one subject of inquiring into bribery of voters at elections to the House of Commons, when the only offense that could be relieved against in any case

was that of treating or bribing a voter, and when, as is well understood, the elective system in Great Britain had become so corrupt as to affect the whole body of the political community in many localities in the Kingdom; and when, in such a case, the prosecution and trial of the great body of the people of the borough or county for such offenses would be impracticable, and no harm could come, as it was supposed, from relieving all who should testify truly. But it is scarcely necessary to discuss these supposed precedents, inasmuch as they differ essentially from what is proposed here, and can have no other weight than the reasons on which they are founded can furnish.

We have already stated the grounds of our opinion that such reasons, certainly as applied to our condition, are wholly unsound. We believe, then, that the proposed enactment is not founded upon sound principles of government, and that it is eminently dangerous to the public interests in respect of the consequences likely to flow from it.

The acts authorizing the Secretary of the Treasury to remit fines and forfeitures in certain cases do not proceed upon the idea of pardoning any crime, but of a quasi-judicial inquiry into the case of the seizure, etc., for violation of the revenue laws, upon certain prescribed evidence; and upon finding (and only on such finding) that the party is actually innocent of any criminal intent, the Secretary may, as a consequence of such established innocence, restore the forfeited right. It is, in substance, a judgment of not guilty, instead of a pardon.

It remains to consider the only known American instance of such legislation. In January, 1857, one Simonton, a newspaper correspondent, having published a statement that members of the House of Representatives had sold or offered to sell their votes on pending measures, was brought before a committee of the House as a witness on the subject. He, stating that members had offered to sell their votes through him, refused to disclose the names of such members, on the alleged ground that it would be a breach of honorable confidence to do so. He was committed to prison for the refusal, and an act, born of the emergency, and doubtless believed to be just and efficacious, was passed through both Houses with great celerity, if not with excessive haste, providing for compulsory incriminating testimony, and for the pardon and indemnity of any witness who should testify before either House or its committees for any crime concerning which he should be examined. The bill was treated on all hands as one of legislative pardon, and its scope was described as "intended to grant a parliamentary pardon beforehand to every witness who, on the summons of the House or a committee, should appear before them and testify to any acts of which he may have been guilty." (Globe, 3d sess. 34th Cong., p. 427.)

A small number of members of the House, not thrown off their balance by indignation at such charges, and not fearing popular clamor, pointed out the dangers of such legislation, but the House refused to refer the bill to the Judiciary Committee for consideration, and, under an excitement well illustrating the great danger of investing any part of the pardoning power in large assemblies, at once passed the bill.

In the Senate very little time was taken for consideration. The bill was received during the discussion of a telegraph question, referred to the Judiciary Committee, reported within half an hour, and was passed the next day.

George E. Pugh, a Senator from Ohio, and perhaps the most eminent jurist of the party then controlling the Senate, submitted his reasons for opposition to such a measure. In so doing he said, speaking of the power to compel a witness to answer, that "in the case of a Congressional committee, especially, is such a power to be denied because the committee is not confined, as courts are, to specific issues, but may exercise an unlimited power of investigation." On the subject embraced in the proposition before this committee, he said, "The provisions will operate in practice as an advantage to those who are most guilty and least scrupulous, enabling them to escape the just consequences of their own crime by the betrayal of their less culpable associates. It is the system too frequently practiced of granting pardon to that one of two or more prisoners who will testify for the prosecution, a system the mischiefs of which are so enormous as to have induced a general opinion that the greatest knave is the first to become the States' evidence;" and that he could not "consent to arm any committee with the powers of a court of high commission or a court of the star chamber, and far less (as here proposed), with powers which exceed those claimed by the most arbitrary of English tribunals."

The bill, nevertheless, passed, and became a law on the 24th of January, 1857. But, as frequently happens with laws produced by the warm temper of the moment and departing from the philosophy of political jurisprudence, the act did not prove the valuable addition to the statutes of the nation anticipated by its friends. It was found to work far greater evil than good. It continued in force until 1862, when that part of it now proposed to be substantially reenacted was found to have cheated justice of its dues more often than it had aided in its administration, and its existence had come to be a crying and notorious evil. It was repealed by the unanimous

vote of both Houses of Congress. The debate in the Senate on that occasion is both interesting and instructive. Mr. Bayard, of Delaware, one of the most eminent of the constitutional lawyers then in the Senate, said:

"There is a part of the bill which certainly ought to pass. I mean that portion which takes away the effect of the former law, so far as it operates as a kind of legislative pardon to a man, provided he has been examined in reference to the subject-matter which is before a committee of either House of Congress."

Mr. Wade said:

"I wonder how such a law was ever passed. I never should have believed that such a law was on your statute books if it had not been suggested to me and I had not found it. I was astounded to find a law in existence providing that if you inquire of any witness in regard to any delinquency that had arisen, he should be exculpated from that moment from the consequences of his crime. I hope no member of the Senate will for one instant sanction any such law."

Such is the lesson of American experience on this subject, yet, in spite of it, the fresh excitement of a day, like a recurring fever in a man, has produced a patriotic thirst for remedies that have already proved delusive and deleterious. The committee can not recommend such measures. There is nothing in the condition of public affairs that requires any change of the existing laws touching the evidence of persons accused of crimes, which the test of time, under all conditions of things, has shown to be available and adequate to all emergencies; much less can they recommend the passage of a law the constitutionality of which is more than doubtful, and that violates the universally understood principles of free and just government, and that has been proved by experience to be utterly useless for the purposes designed, and absolutely mischievous in its operation.

GEORGE F. EDMUNDS.

ROSCOE CONKLING.

FREDERICK T. FRELINGHUYSEN.

GEORGE G. WRIGHT.

T. O. HOWE.

Mr. Stevenson submits the following as the views of the minority:

The undersigned, members of the Committee on the Judiciary, to which was referred House bill No. 2572, entitled "An act to protect witnesses who shall be required to testify in certain cases," being unable to concur in the conclusion arrived at by the majority of the committee, submit, for the consideration of the Senate, these views of the minority:

The majority recommend that the bill be indefinitely postponed. We think it should be amended and passed. The amendment we propose is to strike out all after the enacting clause and insert the following

SUBSTITUTE.

That whenever any person shall be called to testify before either House of Congress, or any committee thereof, or before any joint committee of the two Houses, touching any charge of malfeasance, misfeasance, or corruption of any public officer, clerk, or employé of the United States, or any Department of the Government, or any Senator or Representative in Congress, or touching any charge of bribery, or attempt to bribe any such officer, clerk, employé, Senator, or Representative, or before the Senate of the United States when sitting as a court of impeachment; and the person so called to testify shall refuse or decline to answer any questions put to him upon such inquiry, investigation, or trial, on the ground that his answer would or might criminate or tend to criminate him, or might subject or tend to subject him to some penalty, forfeiture, or criminal punishment, and the witness shall nevertheless be required by either House of Congress, or by the Senate sitting as a court of impeachment, to answer the question or questions put to him, and he shall thereafter truly and fully answer such questions and make a true and faithful discovery and disclosure of all matters within his knowledge pertaining to the subject under investigation by either of the committees aforesaid, or by either House aforesaid, or by the Senate sitting as court of impeachment, then and in such case, such witness shall not be held to answer criminally in any court of justice, or be subject to any penalty or forfeiture, on account of any fact or act concerning which he shall have been required to testify as aforesaid; and he shall be entitled to a certificate from the President of the Senate or the Speaker of the House, setting forth the facts aforesaid, which certificate he may plead in bar of any indictment or prosecution in any court of the United States for any fact or act concerning which he shall have testified as aforesaid; and such certificate shall be admitted in evidence as proof of the truth of such plea, and the plea, when proved, shall constitute a valid defense to

such indictment or prosecution: *Provided*, That nothing herein contained shall be so construed as to exonerate such witness from criminal prosecution and punishment for any perjury committed by him in giving his testimony as aforesaid.

We fear that the bill, as it passed the House, is broader in its scope than public policy or the ends of justice require, and that it might in practice be liable to great abuses. We therefore propose, by our substitute, to limit it to cases that seem to need such a law, and to guard it against abuses by protecting such witnesses only as shall be required by either House of Congress, or by the Senate sitting as a court of impeachment, to testify, and who shall thereafter testify fully and truly, and by providing for certificate of the President of the Senate or Speaker of the House, that shall be evidence of the facts necessary to exonerate the witness, instead of leaving the proof of those facts to rest in parol testimony. It is to be presumed that neither House would require a witness to testify unless the ends of justice and public policy made it more important to obtain his testimony than to punish him for his crimes of offense; and our substitute contemplates a like discretion to be exercised by the Senate sitting as a court of impeachment. With these safeguards, and limited to the cases mentioned in the substitute, we think that there would be no serious ground for apprehension that the law would operate injuriously. On the contrary, our opinion is that it would prove beneficial and powerfully tend to repress official malfeasance, misfeasance, and corruption and bribery, or attempts to bribe; and we are strongly of the opinion that such a law is needed and ought to be enacted without delay.

A grave objection has been suggested to both the House bill and our substitute, or any similar enactment. It is said that such a law would be an usurpation by Congress of the pardoning power vested by the Constitution in the President, and would, therefore, be unconstitutional.

The argument in support of this proposition, if we have correctly apprehended it, may be reduced to the following syllogism:

1. The power to pardon is vested in the President exclusively.
2. The proposed law would be an exercise of the "pardoning power."
3. Ergo. It would be unconstitutional.

We can not assent to this reasoning, and in reply to it submit the following considerations:

1. The President has no power to pardon in "cases of impeachment." His power is conferred by section 2 of article 2 of the Constitution, in these words: "He shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

Manifestly, then, the objection in question has no application to so much of the bill under consideration as relates to witnesses upon an impeachment trial who have violated no criminal or penal statute, but are liable to impeachment. And we submit that for the same reason it can not, as to such witnesses, apply to proceedings in the House of Representatives, or before one of its committees, with a view to prefer articles of impeachment. If Congress can exonerate a witness required to testify before the Senate sitting as a court of impeachment, it seems to us too plain to need argument that it may in like manner exonerate him if called to give evidence before the grand inquest of the Republic, the House of Representatives, when considering the subject of an impeachment.

2. If the proposed law would be an exercise of the pardoning power, then we can not admit that that power is vested in the President exclusively. It is not in its nature necessarily an Executive power. (9 Cowen Rep., 733, *et seq.*) In Great Britain it may be exercised by the Queen or the Parliament, and the courts also exercise the power to reprieve. And so in New York. In most of the States of our Union it is vested more or less fully in their governors, but in some of them it is or has been vested in their general assemblies. The Federal Constitution does not declare that it shall belong to the President exclusively, and the argument that it does so belong rests wholly upon the assumption that the powers of government are so completely and perfectly partitioned between the legislative, executive, and judicial departments that when a power is seen to be conferred upon one department that bare fact conclusively negatives its exercise by any other department. We admit the partition of powers among the several departments of our Government. We admit their independency, and no one can feel more sensibly than we do the necessity of maintaining each department in the exercise of its powers and protecting it against usurpation. But because there is such a partition, does it necessarily follow that it is so scientific, accurate, and exhaustive that when we find a power conferred upon one department the conclusion is irresistible that not only that particular power, but also every power of a similar nature, or having the same general purpose in view, is prohibited to the other departments? For example: The Constitution declares that "the President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States." Does this provision give him an unlimited, exclusive power? Not at all; for the same Constitution declares that

the Congress shall have power "to raise and support armies; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; and to provide for organizing, arming, and disciplining the militia."

Manifestly some of the powers here conferred upon Congress are such as would belong to a commander-in-chief whose authority was unlimited and exclusive.

Again, the Constitution declares that the President "shall take care that the laws be faithfully executed." Does this confer an exclusive power in him? Is he made the sole guardian of the laws? Is it not also the duty of Congress to see that the laws be faithfully executed? Is it not its duty to provide by law for removing from office and punishing many officers who refuse or fail to execute the laws and to bring to trial, conviction, and punishment any person who violates or resists the law? Is it not a function of the judiciary to try, in many cases, and, upon conviction, punish, those who, being charged with the execution of the laws, fail to perform their duty, and is not the exercise of this function the most effective means known to our institutions to secure the faithful execution of the laws? And is not the power of impeachment a like means?

But to come to the very question before us. The President has a limited pardoning power. But has Congress no power to pass an amnesty bill? Express power is conferred upon it to "suppress insurrections," and will any one deny that an amnesty bill might be a very wise and efficient means to accomplish that end? We think not; but if an amnesty bill is an exercise of the pardoning power, then it must be admitted that that power does not belong to the President exclusively.

Again, by what authority does Congress pass statutes of limitation affecting criminal causes and applying to crimes already committed as well as to those committed afterward, if the objection under consideration is well founded? Nobody denies the power of Congress to pass such statutes, and if they do not infringe the Presidential power to pardon, how can it be said that the bill before us infringes it? If Congress can say that a criminal shall not be prosecuted after a given day, why may it not say that he shall not be prosecuted after a certain event.

Again, no one we suppose, will deny the power of either House of Congress to make investigations of the character contemplated by the proposed law. And certainly no one can deny the power of the House of Representatives to impeach offenders for official misconduct, or of the Senate to try impeachments. Such, then, being the powers of the two Houses, laws that are necessary and proper for carrying them into execution, and which are not repugnant to any provision of the Constitution, are valid. There is certainly no provision in the Constitution to which the bill under consideration is expressly repugnant, and we find none from which a repugnancy may be fairly inferred.

Finally. It is not sufficient for those who make the constitutional objection under consideration to show that the proposed law would be an exercise of a pardoning power. They must go further and show that it would be a usurpation of the pardoning power that is vested in the President. Now, in our opinion, this can not be done. The Presidential power is a power to exempt those from punishment whom the law does not exempt. The power to say that for reasons of public policy, for the furtherance of justice, to enable Congress or either House thereof, or the Senate sitting as a court of impeachment, to execute their powers, there shall be exemptions, is a legislative power and not the pardoning power that belongs to the President. The two things are essentially different. The chief reason for giving to an executive magistrate the power to pardon is that he may mitigate the rigor of the law in cases deserving mercy, but whose circumstances are too various and special to admit of definition by law. But the power of a legislature to exempt witnesses from punishment, in certain well-defined cases and for great reasons of public policy, rests on no consideration of mercy to the witness, but upon the higher considerations of the welfare and safety of the state. Several acts of Congress might be cited in support of the views we have expressed, but we content ourselves by a reference to the following: Act of March 3, 1797 (1 Story's Laws, 458); act of January 2, 1813 (2 Story's Laws); construed and enforced in *Gallego, Richards & Co. v. The United States* (1 Brockenbrough's Rep., 439); act of January 24, 1857, Vol. II, 155; act of July 17, 1862, sec. 13, 12 Stat. at Large, p. 592.

It is proper to remark that the foregoing was necessarily written before seeing the report of the majority, which will account for an omission to notice some of the observations and citations contained in it. And, believing that our views here presented substantially cover the whole ground, we do not feel at liberty to ask that the report be delayed in order to enable us to review it.

A. G. THURMAN.
J. W. STEVENSON.

The bill was taken up and made "unfinished business" in the Senate, but was not acted on or thereafter debated.

PRIVILEGES OF MEMBERS—POWER OF THE HOUSE OF REPRESENTATIVES IN RESPECT TO ACTS PERFORMED BY A MEMBER BEFORE HIS ELECTION.

FORTY-FOURTH CONGRESS, SECOND SESSION. MICHAEL C. KERR, OF INDIANA, SPEAKER.

CASES OF WILLIAM S. KING AND JOHN G. SCHUMAKER.

These cases are included for the reason that the report of the Committee on the Judiciary—made by Mr. William P. Lynde, of Wisconsin, and not by Mr. Scott Lord, of New York, as printed (see report No. 815 and Journal, first session Forty-fourth Congress, p. 1410)—is a valuable and important contribution to the subject;

First. Of the power of the House of Representatives to take jurisdiction of violations of law or offenses committed against a previous Congress, and

Second. As to the power and propriety of the House of Representatives to interpose in respect to such acts or offenses which are made crimes by statute, and were then before a court of competent jurisdiction by reference by the House of Representatives under its resolution of March 3, 1875. (See Journal, second session Forty third Congress, pp. 582, 636; Congressional Record, p. 2232.) As the case of Humphrey Marshall, a Senator from Kentucky, is therein alluded to, said case was not included separately, for the reason that the report (No. 79) of the select committee, made by Mr. Samuel Livermore, of Massachusetts, (see American State Papers, Miscellaneous, vol. 1, p. 144), does not cover the entire ground. Attention is also called to the report of the select committee of the House of Representatives made by Mr. Kelsey, No. 179, in the Thirty-fifth Congress in the case of O. B. Matteson, of New York (see *ante*, pp. 191, 192).

The report of the Committee on the Judiciary, through Mr. Lynde, and the views of the minority, submitted by Mr. Scott Lord, of New York, and signed by himself, William Lawrence, of Ohio, George F. Hoar, of Massachusetts, and B. G. Caulfield, of Illinois, with additional views by Mr. George W. McCrary, of Iowa, are herewith appended.

[House Report No. 815, Forty-fourth Congress, first session.]

Mr. Lynde, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, to whom were referred the papers and testimony taken by the Committee on Ways and Means of the Forty-third Congress, with instructions to inquire what action should be taken by the House in reference to the persons now members of this House charged with complicity in the alleged corrupt use of money to procure the passage of an act providing for an additional subsidy in the China mail service during the Forty-second Congress, and with giving false tes-

timony in relation thereto before the Committee on Ways and Means of the Forty-third Congress, have considered the same, and report:

That the Committee on Ways and Means of the Forty-third Congress, after a thorough investigation of the charge that a large sum of money was used to secure the passage through Congress of an increased annual appropriation to the Pacific Mail Steamship Company, in the nature of a subsidy, report, among other things:

"The results of the evidence are, that about \$900,000 was disbursed upon the allegation that it was used in aid of the passage of the act now under investigation. That about \$565,000 appears to have been paid to the exclusive use of persons having no official connection with such legislation; and that the disposition of the remaining \$335,000 remains in doubt upon the evidence presented, but without any testimony showing that it was a reward paid to any person at that time a member of either House of Congress; and that the uncertainty attending the disposition of this latter sum is owing to the refusal of William S. King to testify the truth, and to the failure or refusal of John G. Schumaker to present all the facts which the committee believe it was in his power to give.

"The committee report the following resolutions:

"*Resolved*, That a copy of the testimony taken before the Committee on Ways and Means, upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service, be delivered to the Clerk of the House of Representatives, to be by him laid before the House at the first session of the Forty-fourth Congress, to the end that they may make further inquiry and take due action upon the questions affecting William S. King and John G. Schumaker, and further proceed therein as they shall deem just.

"*Resolved*, That the Clerk of this House transmit to the United States district attorney a copy of the evidence taken before the Committee on Ways and Means upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service, with directions to lay so much of the same as relates to the truth of the testimony given by William S. King and John G. Schumaker before the grand jury of said District, for such action as the law seems to require."

The above resolutions were adopted by the House, and a copy of the evidence taken before the Committee on Ways and Means upon the question of a corrupt use of money to procure the passage of an act providing for an additional subsidy for the China mail service has been transmitted to the United States district attorney for the District of Columbia by the Clerk of the House, in accordance with said resolution.

The whole subject is properly before the court; the offenses charged are crimes by statute, and the Constitution provides: "No person shall be held to answer for an infamous crime unless on a presentment or indictment of a grand jury."

Your committee are of opinion that the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress. This is purely a legislative body, and entirely unsuited for the trial of crimes. The fifth section of the first article of the Constitution authorizes "each House to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." This power is evidently given to enable each House to exercise its constitutional function of legislation unobstructed. It can not vest in Congress a jurisdiction to try a member for an offense committed before his election; for such offense a member, like any other citizen, is amenable to the courts alone. Within four years after the adoption of the first ten amendments to the Constitution, Humphrey Marshall, a Senator of the United States from Kentucky, was charged by the legislature of his State with the crime of perjury, and the memorial was transmitted by the governor to the Senate for its action. The committee to whom it was referred reported against the jurisdiction of the Senate, and say:

"That in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by an impartial jury of the State or district wherein the crime shall have been committed. Until he is legally convicted, the principles of the Constitution and of the common law concur in presuming that he is innocent. And they are also of opinion that as the Constitution does not give jurisdiction to the Senate, the consent of the party can not give it, and that therefore the said memorial ought to be dismissed."

This report was adopted by a vote of 16 to 7. This is the construction given to said section in the first case presented to either House after its adoption by the statesmen who framed the Constitution, and we think it an authority which should control the case before the committee. We know of no public interest which will be promoted by further investigation.

Your committee therefore recommend that the House leave these charges where they now are, in court, to be finally adjudicated and disposed of without any interposition or further action of the House.

VIEWS OF THE MINORITY.

The undersigned members of the Judiciary Committee, to whom was referred the resolution of the 24th of January last, set forth in the report of the majority, respectfully report:

That the only question now presented to the House is the question of jurisdiction, which question arises under the last clause of section 5 of article 1 of the Constitution:

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

It will be seen that there are no words of limitation on the power to expel, which seems to have been left to the good sense and discretion of each House; in other words, does not the Constitution refer rather to the fitness of the member to hold the office, resting on considerations of public justice and policy, than to the time of his election? Yet the undersigned do not deny but that there are limitations on the power of this House arising from the circumstances of particular cases, and the relations of this House to the constituency of an accused member; therefore, as will be seen, the undersigned need not go further in this case than to assert jurisdiction, because the offenses complained of were not known to the constituents of the members in question until after their election.

Without asserting the guilt of the accused, it is sufficient to say that the gravamen of the charges made against them is that one of them (Mr. Schumaker) received the sum of \$275,000, and the other (Mr. King), while an officer of the House, \$75,000, for the purpose of purchasing the votes of members of the Congress for a subsidy to the Pacific Mail Steamship Company; and it is conceded that the alleged reception of such money by them was not known to their constituents until after their election.

It is also alleged that one of the members (Mr. King) testified falsely concerning the moneys received by him before his election to the present House, and that the other (Mr. Schumaker) so testified after his election to the present House, before a committee of the Forty-third Congress.

The fact that the questions involved as to the guilt of the accused members have been referred to the courts of the District of Columbia does not and can not affect the question of jurisdiction, nor in any manner release the House from its duty in the premises, as has been held in the cases of Kilbourn and Belknap. The case of Humphrey Marshall, referred to in the report of the majority, is not a case in point. He was accused of the crime of perjury, committed before a State court in Kentucky; a majority of the Senate concluded that he was entitled to a trial before a jury. If the members in the cases before the Congress were accused of the crime of perjury committed in a State court, in dealing with the question entirely different considerations might be presented.

The committee of the Senate, in the case of Marshall, say:

"That in a case of *this kind* no person can be held to answer for an infamous crime unless on a presentment or indictment of a grand jury."

This decision, however, only relates to trials in court in the administration of criminal justice, and not to protective justice by proceedings on impeachment or expulsion from either House of Congress.

Without now discussing or deciding the question to what depths of infamy a member must have sunk, if condoned by his constituents, before the House should exercise the power to expel him, or without deciding that there is any depth of infamy which, if so condoned, would authorize such expulsion, it is sufficient to say that in the cases before the House the offenses, as alleged, related directly to the attempted corruption of members of the Congress of the United States, which crime or crimes, wherever originated, were consummated, as alleged, in the District of Columbia or within the halls of the Capitol.

In the State of New York, in the case of George G. Barnard, one of the justices of its supreme court, he was held liable to impeachment for offenses committed by him before he was elected to the term of office which he then held. The senate of that State has asserted the same principle.

The Senate of the United States has recently held jurisdiction in a case in which the alleged limitation, if any, forbidding it, is found in the words of the Constitution.

The undersigned therefore recommend the adoption of the following resolution:

Resolved, That the House of Representatives has jurisdiction in the cases of William S. King and John G. Schumaker, and that it be referred to the Committee on Civil Service Reform to ascertain and report the facts.

SCOTT LORD.
WM. LAWRENCE.
GEO. F. HOAR.
B. G. CAULFIELD.

I am of the opinion that the House ought not to assume jurisdiction of a case where a member is charged with having sworn falsely at a time prior to his election, especially if such member has been indicted therefor before the proper judicial tribunal, and pending his trial. But where the charge is that a member of the House has received money to be used by him to corrupt legislation in Congress, for which offense no indictment has been found, I think the House may properly take jurisdiction though the offenses charged were committed prior to his election. I am desirous that an inquiry be made to ascertain whether this latter offense has been committed by either or both of the accused members; and for that purpose, and to that extent, I concur in the report of the minority of the committee.

GEO. W. McCrARY.

**PRIVILEGES OF MEMBERS OF CONGRESS—EXEMPTION FROM
LEGAL PROCESS WHILE EN ROUTE FOR THE PURPOSE OF
ATTENDING (OR RETURNING FROM) A SESSION OF CONGRESS.**

FIFTIETH CONGRESS, FIRST SESSION. JOHN G. CARLISLE, OF KENTUCKY, SPEAKER.

CASE OF MINER VS. MARKHAM.

[H. H. Markham, Representative from California.]

The facts in this case are so fully set forth in the decision of Judge Dyer, U. S. district judge for the eastern district of Wisconsin, that, in view of the importance of the decision and the elaborate review of authorities, it is given in full, an official copy having been furnished the compiler and published by him in his Digest and Manual of the rules and practice of the House of Representatives for the first session of the Fiftieth Congress. (See said volume, p. 401; also Federal Reporter, 1886.)

MINER v. MARKHAM. (TWO CASES.)

[Circuit court, eastern district of Wisconsin, August 9, 1886.]

These were two suits begun in the State court and removed to this court. The summons in each case was served on the defendant personally at Milwaukee, on the 28th day of October, 1885. Before the removal of the cases to this court the defendant appeared specially therein, and moved to set aside the service of the summons in each action on the ground that he was a member of Congress; and at the time of such service was on his way from his residence in California to Washington for the purpose of attending the next ensuing session of Congress. The motion was overruled by the State court, but without prejudice to the right of the defendant to renew the motion in that or any other court in which the cases should be thereafter pending. Thereupon the defendant, thereafter appearing in the cases for the purpose only of removing the same to this court, filed petitions in each suit for the removal of the same under the act of 1875, and the cases were duly removed. A new motion was then made in behalf of the defendant to quash the service of the summons in each action, upon the same ground as that upon which a similar motion was made in the State court, which motion was opposed and argued.

Affidavits filed in the cases in support of the motion showed that at the time of the service of process, and for a considerable time prior thereto, the defendant was a member of the Congress of the United States, having been duly elected thereto, as a Representative from the Sixth Congressional district of the State of California, and that he is a resident of the county of Los Angeles in that State. He alleged that at the time of the service of process upon him he was on his way to the city of Washington for the purpose of attending a session of the House of Representatives, as a member thereof from the Sixth Congressional district of California, and was at the time of such service temporarily in the city of Milwaukee. He further stated in his affidavit that he left Los Angeles accompanied by his wife and four children, intending to proceed to Washington, and there secure a suitable place of residence for himself and family during the session, and in time to arrange for and settle his family and household affairs there, prior to the date of the commencement of the session; that during his journey several of his children were ill, and by reason thereof he was obliged to stop at several places on his way to Washington; and further, that by reason of such illness he was being detained in Milwaukee at the residence of his brother at the time of the service of summons in said actions. He further states in

his affidavit that he started from his residence in Los Angeles County to attend the session of Congress only a reasonable length of time before the commencement of the session, and such as he considered proper and necessary under all the circumstances connected with the proper discharge of his duties as a Representative in Congress, and was proceeding on his way to attend the session without any unreasonable or unnecessary delay.

The affidavit of George C. Markham, brother of the defendant, stated that on the 28th day of October, 1885, when the summons was served, the defendant, with his wife and children, was stopping with him, and that at that time, and for some time prior thereto, the defendant's children were ill, and that by reason thereof the defendant was detained in Milwaukee on his way to the city of Washington with his family for the purpose of attending a session of the Congress of the United States.

It was also shown by affidavit that the usual time required to go from Milwaukee to Washington does not exceed two days; that the time required to come from Pasadena, the residence of the defendant in Los Angeles County, Cal., to Milwaukee, does not exceed six days, and that the time required to travel between Pasadena and Washington does not exceed eleven days.

An affidavit made by the plaintiff stated that for ten years prior to 1878 or 1879 the defendant was a resident of Milwaukee; that in one of the years named he changed his place of residence to the State of California; that prior to the service of the summons upon him in these cases Congress had not been in session since March 4, 1885, and that the next session did not convene until December 7, 1885; that at the time of the service of the summons the defendant had more than abundant time to return from Milwaukee to his residence in California, and, after remaining there over two weeks, to start therefrom and arrive at Washington three weeks before the meeting of Congress; that for at least seven days before the service of the summons and until November 2, 1885, he was in Milwaukee visiting his friends and relatives, and, as the deponent was informed and believed, had spent some time in October hunting deer in the northern woods of this State; that the direct route from the defendant's residence in California to Washington does not include the city of Milwaukee. And it was alleged, upon information and belief, that at the time of the service of the process upon the defendant, and for some time thereafter, he was traveling about and visiting sundry places before going to Washington to attend the session of Congress; and that when he left Los Angeles with his family he did not intend to go direct to Washington, but intended to stop on his way at Milwaukee, to visit friends and relatives at that place.

Supplemental affidavits were filed after the argument of the motion. An affidavit of the defendant stated that when he left California with his family, his family physician deemed it hazardous on account of the tender years of the children to go from California to Washington without change and rest, and therefore advised stopping in Kansas and Wisconsin until about the 1st of November. He stated further that the shortest time for traveling from Pasadena to Washington is six days and six nights, and that owing to his own impaired health it was necessary for him to take every precaution to prevent sickness; that he remained in Topeka, Kans., two days, leaving his wife and children with a relative there while he proceeded to Chicago, and, remaining there one day, he reached Milwaukee October 9; that the following day he went to the hunting camp of his brother in the northern part of the State, intending to remain there until his family reached Chicago; that, owing to sickness and delay, his family did not reach Chicago till about October 21, when he met them there, and on the following day took them to the residence of his brother in Milwaukee; that his two youngest children were seriously ill, and remained so for several days, and that as soon as they recovered, and on November 2, he and his family proceeded to Washington, where it was necessary for him to be at the earliest moment to get his family settled and prepare for the work of the coming session.

The affidavit of R. B. Brown, a practicing physician in Milwaukee, stated in substance that he attended the family of the defendant professionally on the 29th, 30th, and 31st days of October, 1885; that two of the children were ill; that he was informed that they had been ill for several days; and he states that when he visited them they were too ill to travel, and ought not to have traveled in the condition they were in; that he advised the defendant not to leave Milwaukee until they were in better health; further, that the illness of said children did not appear to be serious, and that when he made his last visit he advised the defendant that in a few days the children would probably be well enough to proceed to Washington without material injury to their health.

The plaintiff also made a further affidavit in which he stated that he met the defendant in Milwaukee on the 27th day of October, 1885, and that the defendant made certain statements to him in relation to the health of his family, and also that he had been visiting and hunting with his brother a week or ten days in northern Wisconsin. It was also alleged in the affidavit that on the 26th and 27th of October the defendant and his wife were visiting stores and shops in Milwaukee.

Wells, Brigham & Upham for plaintiff. (James G. Jenkins, of counsel.) Markham & Noyes for defendant.

DYER, J. Upon the presentation of facts thus made, the question to be decided is, was the defendant exempt from the service of civil process on him at the time the summons in each of these actions was served? Two propositions are involved in the consideration of this question: *First*, does the privilege from arrest specified in section 6, Article I, of the Constitution of the United States include a privilege from the service of civil process? *Second*, if it does, to what extent in period of time, with reference to going to and returning from the discharge of public duty, may the privilege be invoked?

1. Section 6, Article I, of the Constitution of the United States provides that Representatives "shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and *in going to and returning from the same*."

In *Juneau Bank v. McSpedan* (5 Biss., 64) it was held that a nonresident defendant, coming within a State for the purpose of defending his suit, can not be legally served with process in another suit; and Judge Miller, in the opinion, says: "In England the privilege from arrest had always been construed to include the service of a summons. So in this country from an early period."

In *Atchinson v. Morris* (11 Biss., 191; S. C., 11 Fed. Rep., 582) Judge Drummond, on a review of the cases held, in accordance with the rule established in New York and Pennsylvania, that as to a witness the privilege extends to freedom from the service of civil process, and is not to be limited, as is held in some cases cited in the opinion, to freedom from arrest. It is observed by Judge Drummond, in deciding the question before him, that in the Federal courts the weight of authority seems to be in favor of a more liberal view of the subject than is taken in some of the State courts. See also *United States v. Bridgman* (9 Biss., 221); *Brooks v. Farwell* (4 Fed. Rep., 166).

In *Geyer's Lessee v. Irwin* (4 Dall., 107), decided in 1790, it was held that a "member of the general assembly is undoubtedly privileged from arrest, summons, citation, or other civil process during his attendance on the public business confided to him."

In *Bolton v. Martin* (1 Dall., 317) it was adjudged that a member of the State convention which assembled in Philadelphia to consider the Constitution of the United States was privileged from the service of a summons or arrest during the session, and for a reasonable time before and after it. This decision was before the ratification of the Constitution proposed for the government of the United States by the Federal convention. The opinion of the court reviews the old law on the subject, and it is there said that "upon an attentive perusal of the statute of 12 and 13 William III, no other authority will be wanting to show what the law was upon this subject before the passing of that act. From the whole frame of that statute it appears clearly to be the sense of the legislature that before that time members of Parliament were privileged from arrest and from being served with any process out of the courts of law, not only during the sitting of Parliament, but during the recess, within the time of privilege, which was a reasonable time *eundo* and *redeundo*." In the same case the court, referring to a citation from Blackstone's Commentaries, 165, to the effect that a member of Parliament might be sued for his debts, though not arrested, during the sitting of Parliament, says:

"This will appear to be expressly confined to actions at the suit of the King under a particular provision in the statute of William III, and by the strongest implication shows that it could not be done at the suit of a private person."

Reference is then made to another passage from Blackstone, where he says:

"Neither can any member of either house be arrested or taken into custody nor served with any process of the courts of law, * * * without a breach of the privilege of Parliament."

In a note to this case it is said that—

"In the case of *United States v. Edme* (9 Serg. and R., 147) the court said that the privilege of protection 'has extended itself in process of time to every case where the attendance was a duty in conducting any proceedings of a judicial nature,' and the case in the text shows that the privilege extends to protect all persons engaged in public business of a legislative character from the service of a summons as well as from arrest. To the same effect (in the case of suitors) is *Miles v. McCullough* (1 Bin., 77)."

In *Parker v. Hotchkiss* (1 Wall., jr., 269) it was held that a suitor in court residing without the circuit is privileged from the service of a summons; overruling the case of *Blight's Ex'r v. Fisher*, decided by Judge Washington in 1809 (1 Pet. C. C., 41), in which this privilege was limited to exemption from arrest. *Parker v. Hotchkiss* was decided by Judge Kane, whose opinion was concurred in by Mr. Justice Grier and Chief Justice Taney.

In *Gentry v. Griffith* (27 Tex., 461) it was decided that members of the legislature are not privileged against service of citation in civil suits by virtue of the pro-

vision in the constitution of the State granting an immunity from arrest to such members during the session of the legislature, and while going to and returning from the same.

In *Case v. Rorabacher* (15 Mich., 537) it was held that there is no general exemption from the service of process without arrest, merely because a party is attending court awaiting the trial of a case. This case appears to be in antagonism to *Juneau Bank v. McSpedan*, *Brooks v. Farwell*, and *Parker v. Hotchkiss*, *ubi supra*, and to *Larned v. Griffin* (12 Fed. Rep., 590), which is an instructive case in its collation of the authorities.

In *Doty v. Strong* (1 Pin., 84) the question was whether the privilege from arrest guaranteed by the Constitution of the United States to members of Congress extended to Delegates from the Territories; and, if so, whether it was not only a privilege from arrest, but also from trial. The affirmative of both of these propositions was there adjudged, and the court, speaking by Mr. Justice Miller, in passing upon the question, uses this language:

"In order to render this provision (meaning section 6 of Article I of the Constitution of the United States) available to the extent of its necessity, it will not do to construe the words 'privilege from arrest' in a confined or literal sense. A liberal construction must be given to these words upon principle and reason. It is just as necessary for the protection of the rights of the people that their representative should be relieved from absenting himself from his public duties during the session of Congress for the purpose of defending his private suits in court as to be exempt from imprisonment on execution. If the people elect an indebted person to represent them, this construction of the Constitution must also be made to protect his rights and interests, although it may operate to the prejudice of his creditors; but the claims of the people upon his personal attendance are paramount to those of individuals, and they must submit."

In *Anderson v. Rountree* (1 Pin., 115) the subject was more thoroughly reviewed and considered, reference upon the question of privilege being made to 5 Bac. Abr., 618; Tidd Pr., 257, and 1 Dunl. Pr., 92, and to the principal adjudged cases then extant, and it was held that the privilege from arrest secured to members of the legislative assembly not only exempted their persons from actual arrest, but also from suit or any civil process which might interfere with their public duties during the continuance of their privilege.

Thus it will be seen that the decisions are not entirely harmonious upon the question of the extent of the privilege in question; but it has been the law in this jurisdiction from Territorial times that the privilege in such a case as that at bar extends to exemption from civil process, with or without actual arrest; and in the absence of more authoritative exposition of the constitutional provision from the Supreme Court of the United States, I shall hold that under that provision the defendant, as a member of the Congress of the United States, was entitled to exemption from service of process upon him, although it was not accompanied with an arrest of his person, provided the privilege was in force at the time of such service.

2. This brings us to the second proposition involved, namely, was the defendant, when served with process, "going to" the capital to attend a session of the House of which he was a member, within the meaning of the constitutional provision? No fixed time is prescribed by the Constitution during which, before and after the close of the session, the privilege in question shall extend. The clause is: "During their attendance at the session of their respective Houses, and in going to and returning from the same." It would be a superfluous task to go into all the old law on this subject as it once existed in England, when members of Parliament were allowed prescribed periods of exemption from arrest before and after sessions of Parliament. An exhaustive review of the law, and of the English authorities, may be found in the case of *Hoppin v. Jenckes* (8 R. I., 453), and nothing can be profitably added to what is there said on the subject. In *Cushing's Law and Practice of Legislative Assemblies*, at section 582, it is said:

"In the Federal Government, and in many States, members are privileged while going and returning merely, without other limitation of time. Where the duration of the privilege is thus stated, members are entitled to a reasonable, or, as it was expressed by the House of Commons on occasion, a *convenient*, time for going and returning. Thus they are not obliged at the close of the session to set out immediately on their return home, but may take a reasonable time to settle their private affairs and prepare for the journey; nor will the privilege be forfeited by reason of some slight deviation from the most direct road."

The *Manual of Parliamentary Practice*, published by authority of the House of Representatives in 1860, states the rule thus:

"The time necessary for going to and returning from Congress not being defined, it will, of course, be judged of in every particular case by those who will have to decide the case. While privilege was understood in England to extend, as it does here, only to exemption from arrest, *cundo morando et redeundo*, the House of Commons themselves decided that a convenient time was to be understood. (1 Hats.,

99, 100.) Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for his journey, and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct, some necessity, perhaps, constraining him to do it. (Str., 986, 987.)"

Such also is, in substance, the language of Judge Story, in his work on the Constitution, section 864. As a result of the authorities that bear on the question, it is held, in *Hoppin v. Jenckes*, *supra*, that the privilege from arrest of a member of Congress is limited to the continuance of the session, and to a reasonable time for going and returning; and this is now the law of this country. What is a reasonable time for "going to and returning" from the seat of government must depend upon circumstances, and may be difficult to determine. The observations of Judge Story, that the law does not scan the road which the member may take in his journey very nicely, nor forfeit his protection for a slight deviation from the route which is most direct, nor, it may be added, measure with precision the time absolutely necessary for going to or returning from the capital, furnish a just and sensible test in considering the question. To entitle the defendant to the privilege here invoked, he must have been in good faith on his way to the seat of government to enter upon the discharge of his public duties; that must have been the primary object of his journey. He must have left his residence in California with the intent of then going to Washington to take his seat in the Congress to which he was elected, and the time taken for the journey must have been reasonable. He had a right, without forfeiture of his privilege, to set out from his residence at such time before the session should open as would enable him conveniently to establish his quarters and settle his family and household affairs at the capital, and also, I think, to enable him to inform himself as a new member regarding pending legislation, so that he might enter advisedly upon the discharge of his duties. A slight deviation from the usual route, for rest, convenience, or because of family sickness, ought not to cause a loss of his privilege, if such deviation was but an incident to the principal journey. Nor ought the duration of the privilege to be strictly measured by the exact number of days, with the present facilities for travel, required for a journey from his residence in California to Washington. At the same time his privilege could not and ought not to avail him if the deviation was equivalent to an abandonment of the original journey for purposes of pleasure or family visiting. If, when he left his home in California, his intention was to make a journey, not to Washington, but to Milwaukee, there to spend an indefinite time visiting relatives, and then to go from Milwaukee to Washington, after such prearranged delay at the former place as would still enable him to arrive at the capital in reasonable time to enter upon his public duties, so that it might be fairly said that the object of his journey at the time he set out upon it was not then to go to the capital, but elsewhere, it is clear that while in Milwaukee he could not assert the constitutional privilege of exemption from arrest or service of process.

Applying these principles to the facts as here presented, I am of the opinion that the defendant was privileged from the service of process upon him in these cases. It is evident that when he set out with his family from Pasadena, his intended destination was Washington. The primary object of the journey was to go to the capital to prepare for and enter upon his duties as a member of Congress. He had a right to exercise a reasonable judgment in connection with the settlement of his family in Washington, as to the time required for the accomplishment of his primary purpose, with its necessary incidents. It can not be said from the facts shown that his destination was Milwaukee. It is evident that the health of his family to a large extent controlled his movements. Under the circumstances, his deviation from the direct route was not such as to justify an inference of abandonment of the original journey or its primary object. His privilege, in view of all the facts shown, ought not, I think, to be adjudged forfeited by such deviation, nor ought the court to measure with mathematical accuracy the days and hours required by the most rapid course of transit to travel from Pasadena to Washington. In short, the defendant was in good faith on his way to the seat of Government to enter upon his public duties as a member elect of the Forty-ninth Congress when the process in these cases was served upon him. His deviation to Milwaukee was but an incident in the journey, and seems to have been occasioned by circumstances which made the deviation justifiable, if not absolutely necessary. He was, therefore, entitled to the protection of his privilege.

The defendant having appeared specially in the State court both in his motion to set aside the service of the summons in these cases and in his application for the removal of the cases to this court, and the motion made in the State court having been denied without prejudice to a renewal of the same, the defendant has not waived his privilege, and can assert it here with the same force and effect as if the suits had been brought and the motion made in this court in the first instance. (*Atchinson v. Morris*, *supra*; *Harkness v. Hyde*, 98 U. S., 476; *Sanderson v. Ohio Cent. R. and C. Co.*, 61 Wis., 609; S. C., 21 N. W. Rep., 818.)

Motion to set aside the service of summons granted.

SILVER POOL INVESTIGATION—ALLEGATION THAT TWELVE SENATORS AND FIFTEEN REPRESENTATIVES WERE ADMITTED TO PARTNERSHIP IN VARIOUS "SILVER POOLS," PENDING PASSAGE OF THE ACT OF JULY 14, 1890, DIRECTING THE PURCHASE OF SILVER BULLION AND ISSUE OF TREASURY NOTES THEREON.

FIFTY-FIRST CONGRESS, SECOND SESSION. THOMAS B. REED, OF MAINE, SPEAKER.

CONTUMACIOUS WITNESS, JAMES B. OWNBEY.

This case is included for the reason that the House decided that a resolution based on a Washington dispatch published in the St. Louis Globe-Democrat of September 20, 1890, alleging that 12 Senators and 15 Representatives, not named, pending the passage of the act of July 14, 1890, "directing the purchase of silver bullion and the issue of Treasury notes thereon" were admitted to partnership in various "silver pools," by which they realized \$1,000,000 profits in the advance of the price of silver after the passage of said act, the correspondents of said paper having declined, under oath before the Committee on Rules, to state or disclose the authorship of the article or give the names of persons who could furnish information on the subject, presented a "question of privilege." (See proceedings and debate in Record, January 12, 1891, pp. 1196 to 1208.) The original preamble and resolution as introduced by Mr. A. M. Dockery, of Missouri, on December 1, 1890, and referred to the Committee on Rules, was amended on motion of Mr. Rogers, of Arkansas, and adopted on January 12, by the House, and appears in the report of the select committee, which, on account of its importance, is given in full without the evidence taken by said committee or the evidence taken by the Committee on Rules, the latter appearing in the Record of January 12, pp. 1201 to 1204. The Speaker appointed as the select committee Messrs. Nelson Dingley, jr., of Maine; Sereno E. Payne, of New York; Jonathan H. Rowell, of Illinois; Samuel W. Peel, of Arkansas, and William C. Oates, of Alabama.

On February 25, 1891, Mr. Dingley submitted the following report, on which no further action was proposed or taken, viz:

The special committee of the House of Representatives, appointed under the following resolution, to wit:

"Whereas it is alleged in the Washington correspondence of the St. Louis Globe-Democrat, under date of September 20 last, that 12 Senators and 15 Representatives, pending the passage of an act entitled "An act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes," approved July 14, 1890, were admitted to partnership in various silver "pools" by which they realized \$1,000,000 profits in the advance of the price of silver after the passage of the said act: Therefore,

Resolved, That the Speaker appoint a special committee of five members of the House, and that said committee be instructed to inquire into all the facts and circumstances connected with silver pools in which Senators and Representatives were alleged to be interested; also with the said alleged purchase and sale of silver prior

to and since the passage of the act of July 14, 1890, including the names of persons selling the same; and also who are the owners of the twelve millions of silver bullion which the United States is now asked to purchase; and for such purposes it shall have power to send for persons and papers and administer oaths, and shall also have the right to report at any time. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the chairman of said committee, to be made immediately available"—

having attended to the duty assigned them, beg leave to report:

The committee met January 16, 1891, the day following their appointment, and entered upon this investigation by examining W. B. Stevens, the Washington correspondent of the St. Louis Globe-Democrat, in which paper was published the Washington dispatch of September 20, 1890, reciting certain charges against Senators and Representatives which were made the basis of the resolution directing the investigation.

This dispatch, on the authority of an unnamed alleged "worker for silver legislation," charged that, during the first session of the present Congress, and while the various propositions for silver legislation which resulted in the passage of the act approved July 14, 1890, were under consideration in committee and in the two Houses of Congress, various pools, syndicates, or organizations of speculators were formed and made large investments in the purchase of silver, with a view of profiting by an advance in silver, which was looked for in case there should be favorable silver legislation; that these pools worked together to bring about such legislation, and in order to secure the votes and influence of Senators and Representatives to carry it through, admitted 12 Senators and 15 Representatives; that in order to enlist "impecunious Congressmen" the pools put up \$250,000 to carry silver for several Senators, Representatives, and Government officials who had not the money to invest, with the understanding that these Senators and Representatives should receive the profits of the "deal" without being subject in any event to loss, which tender was accepted by some and declined by others; and that the profits of these pools in consequence of silver legislation thus promoted were about \$8,000,000, of which \$1,000,000 went to such Senators and Representatives as had become interested in the pools.

The dispatch went on to give details, stating, among other things, that one Western Senator had cleared \$275,000 by investment in such silver pools; that the lowest amount made by any one of the 27 Senators and Representatives who were interested in such pools was \$2,000, which sum, it was stated, went into the pockets of a Missouri Representative who had his interest carried by the pool; that a New York Representative made a "barrel-full;" and that two Californians, two of the Illinois delegation, one Kansas man, and two Iowa members were interested. No names of Senators or Representatives were given in the dispatch.

Mr. Stevens, the correspondent of the St. Louis Globe-Democrat, testified that he was the author of the dispatch to that paper containing these charges and statements, but that he personally had no knowledge respecting the alleged silver pools, or that any Senator or Representative was interested in them, as he had received all these charges and statements from one J. A. Ownbey, and had published them entirely on the authority of said Ownbey, who had mentioned the names of many Senators and Representatives, as well as other persons, to whom he referred in the published charges, which names had been suppressed in the dispatch.

The committee immediately directed the Sergeant-at-Arms to subpoena the said J. A. Ownbey to testify relative to these charges. That officer promptly took measures to discover Ownbey's whereabouts, and after several days ascertained that he was in Chicago, through a published interview of a reporter with him, in which he professed entire readiness to substantiate his charges. The Sergeant-at-Arms at once telegraphed Ownbey at the hotel where it was ascertained he was stopping, and, receiving no reply (notwithstanding the Chicago operator reported that the telegram had been delivered), repeated the message.

Then came a telegraphic reply from the proprietor of the hotel—which reply Ownbey subsequently admitted before the committee was sent by his own request—saying that Ownbey had left for Detroit or Toronto, whereas, as the Sergeant-at-Arms soon learned, he had gone only a short distance from Chicago, and after a day's absence had returned to the city and taken rooms in a flat under the assumed name of Williams.

Having become convinced that Ownbey was endeavoring to avoid appearing before the committee, the Sergeant-at-Arms, by direction of the committee, sent a special deputy to Chicago to personally serve the subpoena, which service was accomplished notwithstanding the obvious efforts of the witness to keep out of the way. But even then Ownbey paid no attention to the subpoena, although he daily found time to inform the newspaper reporters that he was loaded with facts bearing on the subject of investigation. It was not until he had been arrested on a warrant issued by the Speaker under the order of the House, and been brought to the National Capitol by the deputy Sergeant-at-Arms, that Ownbey's attendance was secured.

The committee carefully examined Ownbey, who testified that he communicated to Stevens, the correspondent of the St. Louis Globe-Democrat, substantially the charges and statements published in that paper. Ownbey further testified that he had no personal knowledge of the truth of any of these charges and statements connecting Senators, Representatives, or officials with silver pools or silver purchases, but that all his information relative to them was given him by David T. Littler, of Illinois, J. L. Cunningham, of New York, and James M. Donald, cashier of Hanover National Bank, of New York City—mainly by the latter.

Ownbey desired to give the names of Senators and Representatives who, he claimed, were mentioned to him by Littler, Cunningham, and Donald as interested in silver speculations; but the committee were unanimously of opinion that as such testimony would be hearsay it should not be received, especially as the persons whom Ownbey had given as his authority for the names could be obtained to testify. The committee was strengthened in this conclusion by the impression made by the contradictory testimony of the witness while under examination, and the false telegram which he caused to be sent to the Sergeant-at-Arms, as well as by other developments of his true character, that no reliance could be placed on his statements.

The three gentlemen whom Ownbey had given as his authority for the names of Senators, Representatives, and officials interested in silver speculations were then called before the committee—Mr. Donald, on reading the report of Ownbey's testimony, voluntarily returning from New Orleans, where he was spending a short time for the benefit of his health. All testified that they had never given Ownbey such information as he had represented, or any information beyond what they had testified to; and that they had no knowledge or even information of silver speculations (except that testified to by Littler) aside from the reports in the newspapers.

The conduct of Ownbey after he was discharged strengthened the conviction of the committee that his statements are not entitled to any weight. Wherever he went he appeared before the public in a newspaper interview, in which he represented that he was in possession of abundant papers and facts to substantiate his charges, which the committee would not receive. His story grew day by day, until when he reached Chicago on his return, he had the effrontery to proclaim through the press that he had offered in evidence a certain cipher and certain telegrams from Donald, which showed that the latter was an agent of Congressional speculators in silver, but that the committee refused to receive them; when the fact was that these were offered and received and Ownbey questioned concerning them. Indeed, everything that Ownbey desired to offer in evidence was received by the committee, except his hearsay statement as to the names of Senators and Representatives.

Ownbey was also asked before he left the witness stand if he had any knowledge, papers, or information bearing on the subject of investigation in addition to what he had communicated to the committee, and he testified under oath that he had not. Yet in this interview on his return to Chicago he not only declares that he has important evidence which he has not presented as yet, but goes on to assert that "within an hour after his arrival in Washington a Nebraska member came to him and offered him \$2,500 if he would forget what he knew when he should come to testify."

The fact is that Ownbey was under the surveillance of the Sergeant-at-Arms, or his deputy, or surrounded by many persons from the time he reached Washington till he testified before the committee, and no one could have had such a conversation with him as he alleges without attracting attention. Further, the only Nebraska member who ever saw Ownbey, except for the few minutes at the bar of the House, came before the committee at its first meeting after Ownbey's statement became known to him and stated under oath that so far as he was concerned the charge was a pure invention.

The committee carefully examined Cashier Donald (as well as Ownbey) as to the cipher and telegrams which Ownbey publishes, and alleges in his interview on his return to Chicago that he was not allowed to present in evidence, and also as to a letter sent by Donald to Ownbey, which the latter omits to publish for the reason that it would clearly show the real nature of their relations, and were fully satisfied that Ownbey's explanation of the meaning of these papers is unwarranted; but that Donald's explanation that he employed Ownbey to furnish him and his bank early information of the probability of the passage of those provisions of the silver bill relating to the character of the Treasury notes to be issued, and to the disposition of the fund held by the Treasury for the redemption of the notes of national banks in liquidation, etc. (which information Ownbey falsely professed to be able to obtain earlier than the Washington correspondents), is entirely consistent with the telegrams and note and the known situation of legislation at that time.

Ownbey's statements respecting the amount paid him for this alleged "information" is disproved, and Donald's statements corroborated by Cashier Bradley, of the National Bank of the Republic, of Washington, through whose bank the checks passed. The story which Ownbey told with reference to seeing a letter from a Senator in Don-

ald's office relating to silver speculations proves to relate to a letter from a Senator in reply to one addressed to him by Donald answering an inquiry as to the prospects of the provisions of the silver bill referred to.

In short, wherever Ownbey has testified to any alleged fact, or mentioned in his evidence the name of any person to support his charges and statements respecting silver speculations by Senators or Representatives, beyond what others have testified to, he has been contradicted by the persons referred to, and by an investigation of the facts. Indeed, every Senator and Representative that Ownbey desired to give as interested in silver speculations, whose name has been made public, has at once come before the committee and contradicted the charge. Beyond this, many witnesses who have known him for years have testified that Ownbey's reputation for truth and veracity is so poor that those who are best acquainted with him are astonished that anyone should have regarded his stories as worthy of a moment's consideration, so far as they rest on his testimony alone.

Dismissing, therefore, the story of Ownbey as the product of a "romancer" whose imagination is not restrained by the limitations of truth, an indispensable qualification of a small class of hangers-on about the National Capitol who mysteriously profess to have intimate relations and great influence with Senators and Representatives with whom they have hardly a speaking acquaintance, and who falsely claim to have inside information of the prospects of legislation not obtainable by reporters of reputable newspapers, which influence and information they try to induce the simple to pay for, your committee have followed up every clew which has been brought to their attention for the purpose of ascertaining the truth in relation to the subject of investigation.

Prior to the examination of Ownbey the testimony of Senators Vest and Cameron and Mr. Littler brought out the fact that the latter had purchased silver for Senator Cameron, pending the silver legislation of the last session, and had sold it by the Senator's order before the silver bill passed. Subsequently Representative Abner Taylor, of Illinois, appeared before the committee and testified that he bought silver after the silver bill became a law, and when no additional silver legislation was proposed or expected, and had sold it in August last.

E. N. Hill and J. A. George, of Washington, having testified that J. W. Heddenberg, of Chicago, requested them to sell silver bullion certificates to members of Congress, Heddenberg was subpoenaed; but the latter under oath denied that he ever made such a request, and testified that he never sold nor offered to sell silver bullion or silver certificates representing bullion to any Senator or Representative. Several witnesses testified that Heddenberg's reputation for truth and veracity is good.

Several brokers and bankers who are understood to deal in silver bullion were subpoenaed, but all testified that they had no knowledge or information that any Senator, Representative, or Government official, beyond what has been stated, had ever bought or been interested in silver purchases, or that any silver pool had existed.

R. D. Bogart, the Washington correspondent of the Chicago Evening Post, who had sent a dispatch to that paper in which it was stated that a Representative, whose name was given, was "openly charged with the purchase of a whole lot of ounces of silver," and that he was said to be "a nervous fish in the alleged big pool," was subpoenaed and testified that he had no knowledge or information of this, but that this insinuation against members of Congress, whose names he mentioned—an insinuation calculated to injure their standing—which he had sent his paper, "was merely voicing a little spirit of pleasantry and fun going around the gallery."

The correspondent thought that a Mr. Curtis had told him this story; but Curtis, who was subpoenaed, denied that he had ever given this correspondent such information, and testified that he had no such knowledge. Subsequently the Representative named in the dispatch appeared before the committee and testified that he never bought any silver, and never had any direct or indirect interest in silver purchases.

O'Brien Moore, the Washington correspondent of the St. Louis Republic, who had sent a dispatch to that paper mentioning the name of three Representatives as connected by rumor with silver speculations, was examined by the committee, and testified that he had no personal knowledge of this, nor any information from anyone whose name he could give, unless it was Mr. Stevens, the correspondent of the St. Louis Globe-Democrat, that any Senator or Representative (except the two who had testified to purchases of silver) had been concerned in silver purchases. Subsequently the three Representatives whose names had been published in the dispatch of this correspondent appeared before the committee and testified that they had never had any direct or indirect interest in silver speculations.

It is understood that all these names were among those which Ownbey desired to give the committee.

The slight foundation on which some Washington correspondents send out through the papers which they represent charges and insinuations against public men, in order to make their dispatches "breezy" and "amusing," is well illustrated by the testimony of Mr. Bogart, the correspondent of the Chicago Evening Post. Having sent a dispatch to his paper insinuating that a Senator was interested in silver speculation, and "that perhaps he would not object to letting the investigation drop," he admitted that he had no such knowledge or even information whose source he could give, but that his sole foundation for the statement was some indefinite "whispering" in the gallery that "perhaps Senator —— would just as well not have an investigation."

And having charged in his dispatch that a Representative "was another nervous fish in the silver pool," who had bought a whole lot of ounces of silver at 97, the correspondent also admitted that he "threw this out" as a "pleasant insinuation" simply because he understood this Representative was a speculator, and that he had no knowledge or information on which to base the charge beyond indefinite rumor that could be traced to no one. When asked if he did not think that the public in reading such dispatches as that he sent out would get the idea that the public men whose names he made such insinuations against had been guilty of corrupt conduct, he replied:

"I do not think they would, the way newspapers are made in these days. Newspapers are written these days more to amuse and interest than they are to seriously impress the public."

And when asked if he thought it right to thus besmirch a public man's reputation without any ground for it, in order to make a newspaper entertaining, the correspondent replied:

"Well, we must make our newspaper readable or leave the gallery."

While your committee can but condemn the reckless methods of such correspondents, and express surprise that any reputable newspaper should be willing to encourage such disreputable journalism, yet it is but just to say that the Washington correspondents of those newspapers which stand the highest and exert the healthiest influence on public sentiment repudiate this reckless and sensational style of inventing as well as serving up "news," which, under the guise of making a newspaper readable, catches up and magnifies indefinite, untruthful evil gossip, especially about public men, usually originated by fellows whose reputation ought to discredit their gossip at the start, and, without any inquiry as to its truthfulness, gleefully sends it out on the wings of the lightning to smirch reputations and educate the public to believe—contrary to the fact—that honor and integrity are the exceptions and baseness and corruption the rule among members of Congress and other public men.

Your committee feel constrained to condemn the act of any newspaper correspondent in publishing any statement assailing the integrity of members of Congress in their official conduct upon the authority of irresponsible persons, or upon the authority of any person not known by the correspondent to be reliable and trustworthy.

It is but just to say that a statement made by the Hon. E. H. Conger in debate in the House on the 24th of June, 1890, to the effect that he had been "approached to join silver pools," furnished some excuse for the publication of the general allegation that silver pools existed pending the silver legislation of July of that year, but none for the charge that certain Senators and Representatives had accepted invitations to join them. Mr. Conger, who is now the United States minister to Brazil, and therefore beyond our jurisdiction, was requested by cable to transmit to the committee the names of persons who had approached him in order that they might be subpoenaed, but he declined so to do.

The fact that the exaggerated expressions sometimes made by a member in the heat of debate in order to further or defeat a measure may furnish an excuse for, if not suggest, such dispatches, afford an additional reason for a careful avoidance in debate of insinuations that corrupt influences are being brought to bear upon members to affect legislation, unless the member making such insinuations is prepared to substantiate the charge. It is well understood that a good measure is seriously weakened by even a suspicion that improper means are being employed to advance it.

Your committee have been unable to obtain any evidence to support Ownbey's original charge that there was a silver "pool," or organization of silver speculators, who had made large purchases of silver bullion, and was exerting its combined influence to bring about silver legislation which would cause an advance of silver, and thereby bring large profits to the manipulators.

There were many speculators buying silver individually, and probably in some cases in company, for an anticipated rise through expected legislation, and undoubtedly exerting more or less influence on public sentiment to bring about such legislation; but there is no evidence that there was any "pool" or combination of such speculators working together to this end, or that any Senator or Representative was connected with such a pool. The only organization or combined effort to induce

silver legislation disclosed by the evidence was the public organization known as the silver committee, appointed by the St. Louis silver convention, which has had its headquarters at Washington during the past year.

This committee, according to the testimony of Mr. Francis G. Newlands, of Nevada, one of its members, has printed and distributed hundreds of thousands of pamphlets and circulars, published articles in newspapers, and maintained agents in the field to visit organizations, particularly farmers' alliances, in various parts of the country for the purpose of working up and securing the expression of a public sentiment in favor of free coinage of silver at a ratio of 16 to 1 of gold, at an expense, including the salary of a secretary, of not less than \$10,000 nor more than \$15,000 during the past year, which expense has been met by voluntary contributions of owners of silver mines and bullion and others favoring such legislation.

There was no evidence and the committee has no reason to believe that this committee, which Ownbey described as the head silver pool, had any connection with silver speculations, or expended any money otherwise than for the purpose above stated. The organization appears to be similar in character to many other organizations designed to influence public opinion to secure legislation.

There is no evidence that any pool, combination, syndicate, or individual speculator or speculators furnished money to enable members of Congress to invest in silver, or carried silver with the understanding that such members of Congress were to have the profits, or that any Senator or Representative was interested in any silver pool or syndicate, as charged by Ownbey; nor any evidence that any Senator, Representative or Government official individually invested in silver bullion, or was directly or indirectly interested in silver speculations pending the silver legislation of the first session of the present Congress, except that referring to Senator Cameron.

The evidence shows that one Representative purchased silver after the silver act of July 14, 1890, was passed, and when no silver legislation was pending or proposed, and sold it in August. There is no evidence that any Representative is now, or has been during the present session of Congress, directly or indirectly interested in silver bullion or certificates representing silver bullion.

The most reliable estimate of the stock of silver bullion on hand in the United States January 1, 1891, which your committee have been able to obtain, is that contained in the statement of the Director of the Mint, herewith submitted. This official estimates that the stock at that date was about 12,439,625 fine ounces, of which 6,939,625 ounces were held in trust by the Mercantile Safe Deposit Company of New York, for which this company has issued certificates in the nature of warehouse receipts, assignable in blank, and sold like stocks and bonds outright or on a margin—thus making it impossible to ascertain the present ownership. Much of this stock was imported when silver bullion so sharply advanced under the manipulation of speculators after the passage of the act of July 14, 1890, and is left in the hands of purchasers who are holding it in the hope of an advance.

Your committee submit herewith the evidence taken during the investigation.

NELSON DINGLEY, JR.

S. E. PAYNE.

J. H. ROWELL.

S. W. PEEL.

WM. C. OATES.

ATTEMPTS AT BRIBERY, ETC., IN CONNECTION WITH THE WILSON-GORMAN TARIFF BILL—ALLEGED CORRUPT AND IMPROPER ACTION TO INFLUENCE LEGISLATION IN RESPECT TO SAID BILL—CONTUMACIOUS WITNESSES.

UNITED STATES SENATE, FIFTY-THIRD CONGRESS, SECOND SESSION. ADLAI E. STEVENSON, OF ILLINOIS, VICE-PRESIDENT.

CASES OF ELISHA J. EDWARDS, JOHN S. SHRIVER, ELVERTON R. CHAPMAN, HENRY O. HAVEMEYER, JOHN E. SEARLES, JOHN W. MACARTNEY, AND ALLEN S. SEYMOUR.

On May 16, 1894, Senator Henry Cabot Lodge, of Massachusetts, submitted the following preamble and resolution, viz:

Whereas it has been stated in the Sun, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and

Whereas it has also been stated in a signed article in the Press, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party:

Resolved, That a committee of five Senators be appointed to investigate these charges, and with power to send for persons and papers.

On the following day, the same were taken up, considered, amended, and agreed to, so as to read as follows, viz:

Whereas it has been stated in the Sun, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and

Whereas it has also been stated in a signed article in the Press, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party: Therefore,

Resolved, That a committee of five Senators be appointed to investigate these charges and to inquire further whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes or to secure or defeat legislation, and whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate, and with power to send for persons and papers and to administer oaths.

Resolved further, That said committee be authorized to investigate and report upon any charge or charges which may be filed before it alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation.

(See Congressional Record, pp. 4848-4851.)

The Vice-President having been authorized to appoint the said committee announced the appointment of Senators George Gray of Delaware, William Lindsay of Kentucky, Henry Cabot Lodge of Massachusetts, Cushman K. Davis of Minnesota, and William V. Allen of Nebraska.

On May 25, 1894, Senator Gray, from the special committee, made a unanimous report (No. 436), in which it is said that, "Your committee find nothing from their investigation to impeach, in the least degree, the honor or character of Senators Hunton and Kyle." On May 29 Senator Gray made a further unanimous report (No. 457) in respect to two contumacious witnesses, Elisha J. Edwards and John S. Shriver, in which, after stating the facts in respect to their appearance before the special committee and their refusal to answer certain questions propounded to them, the committee say:

In the opinion of the committee each of the questions put to each of said witnesses was a proper question, and pertinent to the question under inquiry before the committee, and was necessary to make the examination ordered by said resolution of the Senate, and that each of said witnesses is in contempt of the Senate and merits to be dealt with for his misconduct; and that each of said witnesses, by his various refusals to answer the questions as herein set forth, has violated the provisions of that certain act of Congress in such cases made and provided, being chapter 7 of the Revised Statutes of the United States, which chapter is as follows:

"SEC. 102. Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months.

"SEC. 103. No witness is privileged to refuse to testify to any fact or produce any paper respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

"SEC. 104. Whenever a witness summoned, as mentioned in section one hundred and two, fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

The said report concludes as follows, viz:

Wherefore, the committee report and request that the President of the Senate certify as to each witness his aforesaid failure to testify and his aforesaid refusals to answer, and all the facts herein, under the seal of the Senate, to the U. S. district attorney for the District of Columbia, to the end that each of said witnesses may be proceeded against in manner and form provided by law.

When that report was submitted, Senator Hill, of New York, raised the question of "reception" of the said report. It was claimed by Senator Gray that the subject matter of the report made it a "privileged question," and could interrupt the ordinary legislative proceedings of the Senate. The reading of the report being demanded, the Presiding Officer (Senator Faulkner, of West Virginia), ruled that the claim being made that said report "involved the highest privileges of the Senate, it must be read for the information of the Chair as well as the Senate," in order to guide the Chair in its ruling on the question presented, and the Senate if an appeal were taken.

The report was read and the questions of order discussed, after which the President of the Senate ruled that the report was privileged, and was "not such a report as calls for any action on the part of the Senate."

From that decision Senator Hill appealed, which said appeal, after debate, was, on motion of Senator Harris, of Tennessee, laid on the table. (See Congressional Record, pp. 5450-5458.)

The President of the Senate thereupon certified the said witnesses, Edwards and Shriver, to the district attorney for the District of Columbia under the statute.

On June 12, 1894, Senator Gray made a further unanimous report (No. 477) in respect to Elverton R. Chapman, a contumacious witness, in which the same recommendation was made as in the cases of Edwards and Shriver. Senator Allen added his views, and submitted the following preamble and resolution for adoption by the Senate, viz:

In addition to the above recommendation of the committee regarding the witness, E. R. Chapman, I think he ought to be brought to the bar of the Senate and required to purge himself of the contempt of which he is guilty, or be summarily punished for a refusal to do so. I therefore recommend the adoption of the following resolution by the Senate:

"Whereas E. R. Chapman a witness, was heretofore duly summoned by a select committee of the Senate, and, being lawfully required to testify before said committee has, as appears by the report of said committee, refused to answer pertinent and material questions propounded to him by said committee: Therefore,

Resolved, That the President of the Senate issue his warrant in due form under his hand and the seal of the Senate, directed to the Sergeant-at-Arms of the Senate, commanding him forthwith to arrest and bring to the bar of the Senate the body of said E. R. Chapman, to show cause why he should not be punished for contempt, and in the meantime to keep the said Chapman in custody to await the further order of the Senate."

No action was taken by the Senate in respect to the report, or the said preamble and resolution, and the President of the Senate certified the said witness to the district attorney under the statute.

On June 21, 1894, Senator Davis submitted two reports (Nos. 485 and 486), in respect to Henry O. Havemeyer and John E. Searles, signed by himself and Senators Lodge and Allen, recommending that the President of the Senate certify to the U. S. district attorney for the District of Columbia, as to each of said witnesses "his aforesaid refusals to answer, and all the facts under the seal of the Senate, in order that said witnesses may be proceeded against in manner and form provided by law."

Senator Gray submitted the views of the minority as follows, viz:

The undersigned members of the committee, being unable to agree with the majority in the report made by them to the Senate in the case of the witness Henry O. Havemeyer, deem it proper to state the ground of their dissent.

The resolution of the Senate under which the committee has been prosecuting this investigation directs it to inquire, among other things, "whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes, or to secure or defeat legislation."

The undersigned do not believe that in our system of Government unlimited power is deposited by the people anywhere, but on the other hand, that limitation of power was conspicuously kept in view by the framers of that Government. They do not feel at liberty, therefore, to impute to the Senate a purpose to pursue ends clearly beyond the scope of its power. Admitting that an inquiry as to whether certain persons have made contributions to any political party to secure or defeat Federal legislation is within the competence of the Senate to make, they deny that it is within such competence to direct an inquiry as to who has contributed to the campaign fund of any political party without reference to the purpose for which the contribution was made.

The undersigned, therefore, in obedience to the principle of the well-established rule that where a construction is possible which brings a law within the enacting power of the legislature, such construction shall obtain, have felt compelled to construe the resolution so as to make the instruction of the Senate to the committee one commanding it to inquire whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes to secure or defeat Federal legislation. As will appear from the evidence of Mr. Havemeyer submitted to the Senate, the question was, in substance, thus put to him and answered in the negative.

It will be observed, from the extracts from the testimony submitted by the majority of the committee, that the witness Havemeyer answered freely and fully all questions as to whether or not contributions had been made by the sugar trust to the national campaign fund of any party, and that the charge of contumacy rests solely upon questions put to him as to the amounts and particulars of contributions which he had testified had been made by the trust for local and State purposes. Therefore, the question presented by this report is whether or not the Senate of the United States

directed this committee, or had power to direct this committee, to inquire as to what contributions a particular individual or corporation may have made to campaign funds for the conduct of elections, strictly State or local, in the years 1892 and 1893.

It is the opinion of the undersigned that the resolution under which this committee is acting will not admit of the interpretation necessary to support the report of the majority of the committee, and that the said witness has not refused to answer any question that was pertinent to the inquiry with which the committee was, or could have been, properly charged.

GEO. GRAY.

WILLIAM LINDSAY.

Senator Allen added the same recommendation made by him in respect to the witness Chapman, on which no action was taken by the Senate.

Senator Gray asked that the usual proceedings be taken, and the President of the Senate stated that "it will be so ordered." Senator Hill objected to said order being then made, and moved that said report be not received. After some debate Senator Harris made the point of order that a motion that a report of a committee of the Senate "be not received" was not in order. After further debate an order was made for printing in the Record and in document form, leaving pending the question of the reception of the report as moved by Senator Hill. That question was discussed by Senators Gray, Chandler, Harris, Hill, Hoar, Platt, and Faulkner, during which debate a motion for an executive session prevailed, and the subject was not thereafter resumed. (See Record, pp. 6639-6648.)

On the same day (June 21) Senator Gray submitted the unanimous report of the committee (No. 487) as to John W. Macartney, recommending the same action as in the previous cases, which was duly taken by the President of the Senate in accordance with the statute and said recommendation, and on August 2, Senator Gray submitted the unanimous report (No. 624) of the committee as to Allen L. Seymour, making the same recommendation as in the preceding cases, which action was duly taken by the President of the Senate under the statute and said recommendation, Senator Allen submitting the same recommendation as to said witnesses as in the previous cases.

On August 2, 1894, Senator Gray submitted the final and unanimous report (No. 606) of the committee, and asked that said committee be discharged from further consideration of the subject. Additional views were submitted by Senator Lodge on behalf of Senator Davis and himself, and Senator Allen also submitted his additional views. The report and additional views were ordered to be printed. Senator Chandler objected to the request that said committee be discharged from further consideration of the subject, and asked that said request go over for the present, and there being no objection thereto, the Vice-President announced that "it will be so ordered."

The final (or general) report, with the said additional views submitted by Senators Lodge and Davis and by Senator Allen, is numbered No. 606, and embraces all the preliminary reports made from time to time in respect to the charges as to Senators Hunton and Kyle and the several contumacious witnesses, and are respectively numbered as follows, viz:

	No.
Senators Hunton and Kyle, May 25, 1894.....	436
Elisha J. Edwards, May 29, 1894.....	457
John S. Shriver, May 29, 1894.....	457
Elverton R. Chapman, June 12, 1894.....	477
Henry O. Havemeyer, June 21, 1894.....	485
John E. Searles, June 21, 1894.....	486
John W. Macartney, June 21, 1894.....	487
Allen L. Seymour, August 2, 1894.....	624

JUDICIAL DECISIONS.

[See also Preface and Table of Contents.]

The leading, or more important judicial decisions touching the power of either House of Congress, or committees thereof, to compel the attendance of witnesses and disclose testimony, together with cases of a cognate character involving the power of Congress, or a State legislature, to delegate its powers in that regard to a court, or commission, are herewith given, the titles being as follows:

Anderson v. Dunn. United States Supreme Court. February term, 1821 (6 Wheaton, 204); (see also p. 30 of this compilation.) Opinion by Mr. Justice Johnson, p. 588.

John Nugent v. Robert Beale, Sergeant-at-Arms of the Senate. Circuit court of the District of Columbia, March term, 1848. Opinion by Mr. Chief Justice Cranch (see also p. 78 of this compilation), 601-620.

Kilbourn v. Thompson. United States Supreme Court, October term, 1880. Opinion by Mr. Justice Miller, 708-729 (see also p. 536 of this compilation.)

Pacific Railway Commission, Application of, to compel *Leland Stanford* to answer certain interrogatories to him propounded by said Commission. Briefs of counsel, etc., opinions of Mr. Justice Field, and Judges Sawyer and Sabin, delivered in the United States circuit court at San Francisco, August 29, 1887, and dissenting opinion of Judge Hoffman, 621-707.

The People ex rel. William McDonald, respondent, v. William H. Keeler as sheriff, etc., appellant. Court of appeals of the State of New York. Opinion by Justice Rapallo, October term, 1885, 729-743.

Charles Counselman, appellant, v. Frank Hitchcock, marshal of the United States for the northern district of Illinois. United States Supreme Court, October term, 1891. Decision by Mr. Justice Blatchford, 744-763.

The Interstate Commerce Commission, appellant, v. W. G. Brimson et al. United States Supreme Court, October term, 1893. Decision by Mr. Justice Harlan. Dissenting, Mr. Justice Brewer, Mr. Chief Justice Fuller, and Mr. Justice Jackson. Mr. Justice Field not sitting, 764-788.

The United States v. James et al. United States district court, northern district of Illinois. February term, 1894. Decision by Judge Grosscup, 789-796.

The United States v. Elverton R. Chapman and John W. Macartney. Supreme Court of the District of Columbia, 797. Opinion of Associate Justice Cole, 805-811. Also his opinion in the cases *United States v. Allen S. Seymour*; *Elisha J. Edwards*; *John S. Shriver*, *John E. Searles*, and *Henry O. Havemeyer*, 854-857.

Elverton R. Chapman and John W. Macartney v. The United States. Court of appeals of the District of Columbia. Decision by Mr. Chief Justice Alvey, affirming judgments, 822-828.

Application of Elverton R. Chapman to Supreme Court of the United States for leave to file a petition praying that writ of habeas corpus might issue, 857. Proceedings thereon, 859. Decision of Supreme Court by Mr. Chief Justice Fuller denying said application, 862.

ANDERSON v. DUNN.

To an action of trespass against the Sergeant-at-Arms of the House of Representatives of the United States, for an assault and battery and false imprisonment, it is a legal justification and bar, to plead, that a Congress was held and sitting, during the period of the trespasses complained of, and that the House of Representatives had resolved that the plaintiff had been guilty of a breach of the privileges of the House, and of a high contempt of the dignity and authority of the same; and had ordered that the Speaker should issue his warrant to the Sergeant-at-Arms, commanding him to take the plaintiff into custody, wherever to be found, and to have him before the said House, to answer to the said charge; and that the Speaker did accordingly issue such a warrant, reciting the said resolution and order, and commanding the Sergeant-at-Arms to take the plaintiff into custody, &c., and deliver the said warrant to the defendant. By virtue of which warrant the defendant arrested the plaintiff, and conveyed him to the bar of the House, where he was heard in his defense, touching the matter of the said charge, and the examination being adjourned from day to day, and the House having ordered the plaintiff to be detained in custody, he was accordingly detained by the defendant, until he was finally adjudged to be guilty, and convicted of the charge aforesaid, and ordered to be forthwith brought to the bar, and reprimanded by the Speaker, and then discharged from custody; and after being thus reprimanded, was actually discharged from the arrest and custody aforesaid.

Error to the circuit court of the District of Columbia.

This was an action of trespass, brought in the court below by the plaintiff in error against the defendant in error for an assault and battery and false imprisonment to which the defendant pleaded the general issue, and a special plea of justification. The plaintiff demurred generally to the special plea, which was adjudged good, and the demurrer overruled; and judgment upon such demurrer was entered for the defendant, and a writ of error brought by the plaintiff. The question arising upon the demurrer will be best explained by giving the defendant's plea at large, as pleaded and adjudged good upon general demurrer, in the circuit court, viz:

And the said Thomas, by the leave of the court here first had, further defends the force and injury, when, &c. And as to the coming with force and arms, or whatsoever is against the peace; and also as to the assaulting, beating, bruising, battering, and illtreating of the said John, in manner and form as the said John, in his said declaration, hath above supposed to be done, the said Thomas saith that he is not guilty thereof; and of this he, as before, puts himself upon the country. And as to the imprisonment of the said John, and the keeping and detaining him in confinement, at the time in the said declaration mentioned, to wit, on the said eighth day of January, in the year one thousand eight hundred and eighteen, and for the space of two months in the said declaration mentioned, the said Thomas saith that the said John ought not to have or maintain his action aforesaid against him, because he saith that long before and at the said time when, &c., in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, a Congress of the United States was holden at the city of

Washington, in the county of Washington, and District of Columbia aforesaid, and was then and there, and during all the time aforesaid, assembled and sitting; and that long before and at the time when, &c., in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, he, the said Thomas, was and yet is Sergeant-at-Arms of the House of Representatives (then and there being one of the Houses whereof the said Congress of the United States consisted), and by virtue of his said office, and by the tenor and effect of the standing rules and orders ordained and established by the said House for the determining of the rules of its proceedings, and by the force and effect of the laws and customs of the said House, and of the said Congress, was then and there, and during all the time aforesaid, and yet is duly authorized and required, amongst other things, to execute the commands of the said House, from time to time, together with all such process issued by authority thereof, as shall be directed to him by the Speaker of the said House; and that long before, and at the time when, &c., in the introduction of this plea mentioned, and during all the time in the declaration mentioned, one Henry Clay was, and yet is, the Speaker of the said House of Representatives, and by virtue of his said office, and by the tenor and effect of such standing rules and orders as aforesaid, and by the force and effect of such laws and customs as aforesaid, then and there, and during all the time aforesaid, was and yet is, amongst other things, duly authorized and required to subscribe with his proper hand, and to seal with his seal, all writs, warrants, and subpœnas issued by order of the said House; and that long before and at the time when, &c., in the introduction of this plea mentioned, and during all the time in the said declaration mentioned, one Thomas Dougherty was, and yet is, the Clerk of the said House of Representatives; and by virtue of his said office, and by the tenor and effect of such standing rules and orders as aforesaid, and by the force and effect of such laws and customs as aforesaid, then and there, and during all the time aforesaid, was and yet is, amongst other things, duly authorized and required to attest and subscribe with his proper hand all such writs, warrants, and subpœnas issued by order of the said House; and that long before and at the time when, &c., in the introduction of this plea mentioned, and during all the time in the said declaration mentioned and ever since, it was and yet is, amongst other things, ordained, established, and practised, by and under such standing rules and orders as aforesaid, and such laws and customs as aforesaid, that all writs, warrants, subpœnas, and other process issued by order of the said House shall be under the hand and seal of the said Speaker of the said House, and attested by the said Clerk of the said House; and so being under the hand and seal of the said Speaker and attested by the said Clerk as aforesaid, shall be executed, pursuant to the tenor and effect of the same, by the said Sergeant-at-Arms. And the said Thomas, the defendant, further saith, that the said Henry Clay, so being such Speaker of the said House of Representatives as aforesaid, and the said Thomas Dougherty, so being such Clerk of the same House as aforesaid, and he the said defendant, so being such Sergeant-at-Arms of the same House as aforesaid, and the said Congress, so being assembled and sitting as aforesaid, heretofore and before the said time when, &c., in the introduction of this plea mentioned, to wit, on the seventh day of January, in the year aforesaid, at Washington aforesaid, in the county and District aforesaid, it was, in and by the said House, for good and sufficient cause to the same appearing, resolved and ordered, pursuant to the tenor and effect of such standing rules and orders so ordained

and established as aforesaid, and according to the force and effect of such laws and customs as aforesaid, that the said John had been guilty of a breach of the privileges of the said House, and of a high contempt of the dignity and authority of the same; wherefore, it was then and there, in and by the said House, further resolved and ordered, in the like pursuance of such standing rules and orders as aforesaid, and of such laws and customs as aforesaid, that the said Speaker should forthwith issue his warrant, directed to the Sergeant-at-Arms, commanding him to take into custody the body of the said John, wherever to be found, and the same forthwith to have before the said House, at the bar thereof, then and there to answer to the said charge, &c., as by the Journal, record, and proceedings of the said resolutions and order in the said House remaining, reference being thereto had, will more fully appear. Whereupon, the said Henry Clay, so being such Speaker as aforesaid, in pursuance of such standing rules and orders as aforesaid, and according to such laws and customs as aforesaid, did, for the execution of the resolutions and order aforesaid, afterwards; and before the time when, &c., in the introduction of this plea mentioned, to wit, on the said seventh day of January, in the year aforesaid, at Washington aforesaid, in the county aforesaid, as such Speaker as aforesaid, duly make and issue his certain warrant, under his hand and seal, duly directed to the said Thomas, the defendant, as such Sergeant-at-Arms as aforesaid (to whom, so being such Sergeant-at-Arms as aforesaid, the execution of such warrant then and there belonged), and by the said Thomas Dougherty, so being such Clerk as aforesaid; in and by said warrant, reciting that the said House of Representatives had, that day, resolved and adjudged, that the said John Anderson had been guilty of a breach of the privileges of the said House, and of a high contempt of its dignity and authority; and that the said House had thereupon ordered the said Speaker to issue his warrant, directed to the said Sergeant-at-Arms, commanding him, the said Sergeant, to take into custody the body of the said John Anderson, wherever to be found, and the same forthwith to have before the said House, at the bar thereof, then and there to answer to the said charge; therefore, it was required that the said Thomas, the defendant, as such Sergeant as aforesaid, should take into his custody the body of the said John Anderson, and then forthwith to bring him before the said House, at the bar thereof, then and there to answer to the charge aforesaid, and to be dealt with by the said House, according to the Constitution and laws of the United States. And said Henry Clay, so being such Speaker as aforesaid, then and there, and before the said time when, &c., in the introduction of this plea mentioned, delivered the said warrant to the said Thomas, so being such Sergeant as aforesaid, to be executed in due form of law. By virtue, and in execution of which said warrant, the said Thomas, as such Sergeant as aforesaid, afterwards, to wit, at the said time when, &c., in the introduction of this plea mentioned, at Washington aforesaid, in order to arrest the said John, and convey him in custody to the bar of the said House, to answer to the charge aforesaid, and to be dealt with by the said House, according to the Constitution and laws of the United States, in obedience to the resolutions and order aforesaid, and to the tenor and effect of the said warrant, so issued as aforesaid, went to the said John, and then and there gently laid his hands on the said John to arrest him, and did then and there arrest him by his body, and take him into custody, and did then forthwith convey him to the bar of the said House, as it was lawful for the said Thomas to do for the

cause aforesaid; and thereupon such proceedings were had, in and by the said House, that the said John was then and there forthwith duly examined, and heard in his defence, before the said House, at the bar thereof, touching the matter of the said charge; and that such examination was, in and by the said House, and by the resolutions and orders of the same, duly adjourned and continued from day to day, from the said time when, &c., in the introduction of this plea mentioned, until the sixteenth day of January, in the year aforesaid; which said examinations were then so adjourned and continued, as aforesaid, from necessity, in order to go through and conclude the examination and defence of the said John, touching the matter of the said charge, before the said House; neither the said examination, nor the said defence, having been finished or concluded before the day last aforesaid; during all which time, to wit, from the said time when, &c., in the introduction of this plea mentioned, until the day last aforesaid, it was, in and by the said House, duly resolved and ordered, from day to day, as the said examination was adjourned and continued as aforesaid, that the said John should be remanded, kept, and detained in the custody of the said Thomas, as such Sergeant as aforesaid, by virtue and in execution of the said warrant, in order to have such his examinations and defence finished and concluded, in due form; and the said Thomas, as such Sergeant as aforesaid, afterwards, to wit, at and from the said time when, &c., in the introduction of this plea mentioned, until the said sixteenth day of January, in the year aforesaid, did, in pursuance of the last-mentioned resolutions and orders of said House, and by virtue, and in execution of the said warrant, keep and detain the said John in custody as aforesaid, and him did bring and have, from day to day, during the said time, before the said House, at the bar thereof, in order to undergo such examinations as aforesaid, and to be heard in his defence aforesaid, touching the matter of the said charge, to wit, at Washington aforesaid, in the county aforesaid, as it was also lawful for him, the said Thomas, to do for the cause aforesaid; and thereupon afterwards, to wit, on the said last mentioned sixteenth day of January, in the year aforesaid, such further proceedings were had in and by the said House, that it was then and there finally resolved and adjudged, in and by the said House, that the said John was guilty, and convict of the charge aforesaid, in the form aforesaid; and that he be forthwith brought to the bar of the said House, and there reprimanded by the said Speaker, for the outrage by the said John committed, and then that he be forthwith discharged from the custody of the said Sergeant-at-Arms; and thereupon the said John was then and there, in pursuance of the last-mentioned resolutions, order, and judgment, forthwith reprimanded by the said Speaker, and then forthwith discharged from the arrest and custody aforesaid; as by the journals, record, and proceedings of the said resolutions, orders, and judgment in the said House remaining, reference being thereto had, will more fully appear; which are the same several supposed trespasses in the introduction of this plea mentioned, and whereof the said John hath, above in his said declaration, complained against the said Thomas, and not other or different: With this, that the said Thomas doth aver that the said John, the now plaintiff, and the said John Anderson, in the said resolutions, orders, warrants, and judgment respectively mentioned, was, and is, one and the same person; and that at t shead several times in this plea mentioned, and during all the time therein mentioned, the said Congress of the United States was assembled and sitting, to wit, at Washington aforesaid, in the county

aforesaid; and this the said Thomas is ready to verify; wherefore he prays judgment, if the said John ought to have or maintain his aforesaid action thereof against him, &c.

Mr. Hall, for the plaintiff in error, made three points:

(1) That the House of Representatives had no authority to issue the warrant.

(2) That the warrant is illegal on the face of it.

(3) That, in either case, it is no justification to the officer who executed it.

1. If the House had authority, it must be either in virtue of the Constitution of the United States, of usage and precedent, or as inherent in, and incidental to, legislative bodies. In the Constitution there are but two clauses which can be made to serve the purpose. The first article, section eight, enables Congress to make all laws which may be necessary and proper to effectuate the powers expressly given. But it is obvious that this merely authorizes the Legislature collectively, not one House separately, to pass certain *laws*, not mere occasional sentences. And the powers delegated to the United States, being in derogation of the rights of sovereign States, must be construed strictly.* For the same reasons, the authority to determine the rules of its proceedings (art. 1 sec. 5,) can not be construed to operate beyond the walls of the House, except on its own members and its officers. It is observable, also, that this authority is coupled with an authority to punish its members for misbehaviour, and to expel a member. It is a rule of construction that the text should be considered in connection with the context; but the context, viz, the power to punish and to expel, relates solely to the internal polity and economy of the House. The authority is to determine the *rules* of its proceedings, not the *proceedings* themselves, for these are determined by the Constitution itself in the first article. The fifth section of the first article authorizes the House to punish *its members*; *et enumeratio unius est exclusio alterius*. The power of issuing warrants is manifestly *judicial*. This may be assumed as an axiom. The Constitution ordains that the judicial power (which is equivalent to all the judicial power) shall be vested in one Supreme Court and other inferior courts (art. 3, sec. 1). Thus, the right of the *courts* to exercise such a power is *exclusive*, and an assumption of it by any other department is an usurpation. Nor can the authority be inferred from usage and precedent. These must be, either of the two Houses of Congress, the state Legislatures, or the British Parliament. On the journals of the House of Representatives are found the cases of Randal and Whitney, and two others. On those of the Senate, is the case of the editor of the Aurora, &c. Shall we be told that these proceedings were acquiesced in? The want of spirit in the individual to resist oppression can not fairly be construed into acquiescence on the part of the public; since that resistance could be made only by the person immediately affected. As to the usage of the State legislatures, it is either under color of their unlimited powers, of express provisions in their constitution, or of the common law and the usage of Parliament. In this case, unlimited powers and express provision are not pretended; the penal code of the common law is no part of the Federal system. Is, then, the authority incident to legislative bodies? An incident is defined, "a thing *necessarily* depending upon or appertaining to another that is more worthy, or principal." So the Constitution of the United States (art. 1, sec. 8), when regulat-

* 2 Mass. Rep., 146.

ing the incidental powers of Congress, authorizes it to make such law only as may be "*necessary*" to effectuate the express powers. *Necessity*, then, is the criterion of incident. But is a power to punish the offer of a bribe beyond the verge of the House necessary to enable Congress to perform its duties? The impunity of the offence being the only possible reason of the necessity, if the offender may be adequately punished by the courts of justice in the ordinary mode of proceeding, the supposed necessity ceases. Bribery of a member of Congress is punishable in the State courts, and in the circuit court of the District of Columbia, according to the course of the common law. Redress may also be had before the same tribunals, in case of the battery or libel of a member; and if the existing remedies be insufficient, an act of Congress may be made to supply the deficiency. And though the ordinary remedies should not reach every possible case, it is a rule that "if the *words* of a statute do not extend to a mischief which rarely occurs, they shall not, by an equitable construction, be extended to that mischief; but it is a *casus omissus*; and the objects of statutes are mischiefs, *quæ frequentius accidunt*."* It is evident that the framers of the Constitution deemed it more prudent to leave such mere possible mischiefs unprovided for than to incur a certain evil by vesting an extraordinary and dangerous prerogative for their suppression.

2. The warrant is illegal on the face of it. By the fourth article of the amendments to the Constitution it is provided that "*no* warrant shall issue but on probable cause, supported by oath or affirmation." Thus are prohibited *all* warrants which do not rest on oath and on probable cause. But it is no less necessary that the warrant should recite the cause in special and the oath. The Constitution is not satisfied with "*a cause*" so vague and indefinite as "*high contempt and breach of privilege*." When it adopts a term from the common law it adopts, also, the law regulating its incidents and properties, unless repugnant to that instrument. Now, what are the incidents and properties of a warrant at common law? It is said by Dalton that "*the warrant ought to contain the special cause and matter whereupon it is granted*."†

3. If there be either a defect of authority in the House, or illegality in the warrant, it is no justification. That it is none in the former case, has long since been settled in this court.‡ As to the latter alternative of the proposition, the Constitution, by prohibiting an act, renders it void, if done; otherwise, the prohibition were nugatory.§ Thus, the warrant is a nullity. The rights of Congress on the subject of contempts have been considered similar, and equal to those of the Federal courts. But here we must recur again to the maxim, that when the Constitution adopts a term from the common law, it adopts, also, its incidents. At common law, the power to punish contempt is incident to courts. But "*Congress*," and the "*House of Representatives*," being terms unknown to the common law, can derive no claims through it. Courts enforce the laws; they must, therefore, be clothed with authority to compel obedience to them: Whereas, the Legislature is merely deliberative. But, it is asked, are the members to be insulted with impunity, in a manner which will not authorize the interference of a court? If the insolence be merely by words or gestures, not amounting to slander or assault, the genius of our institutions does not admit of its punishment. Privilege of Congress is reduced by the

* Vaugh, 373.

† Dalton's Sheriff, 169.

‡ Little v. Barreme (2 Cranch, 179).

§ Bl. Comm. 491.

sixth section, article 1, of the Constitution, to exemption from arrest and freedom of speech. From the nature of the enumerated privileges, it is evident that the sole object of giving them was to prevent interruption of the business of the Houses, not to render the person and feelings of members more sacred than those of other citizens. An attempt to bribe a member may be made in Maine or Missouri. The Speaker's warrant may be issued on a mere allegation without oath, commanding the Sergeant-at-Arms to arrest the accused "*wherever found*," and bring him to the bar of the House. So that he may be dragged from the extreme of the Union, to be tried by a legislative body. Yet the Constitution (art. 3, sec. 2) provides that "the trial of all crimes shall be by jury, and that such trial shall be held in the State and district where the offence was committed;" and, also (art. 5, amendments), that "no person shall be held to answer for an infamous crime, except on the presentment or indictment of a grand jury; nor shall be deprived of liberty without due process of law." And further, that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district." It is only necessary to compare the conduct of the House of Representatives, in the case at bar, with these provisions, in order to perceive its gross injustice and illegality.

The Attorney-General and Mr. Jones, contra, stated that the only question before the court was, whether the House of Representatives could exercise the power in question, either as incidental to its legislative or its judicial capacity.

1. The House being one branch of the Legislature, no legislative act can be performed without its concurrence, and therefore an attack upon it is an attack upon the whole Congress. The necessity of self-defence is as incidental to legislative as to judicial authority. This power is not a substantive provision of the common law adopted by us; it is rather a principle of universal law growing out of the natural right of self-defence belonging to all persons. It is unnecessary to resort to the doctrine of constructive contempts in order to vindicate the conduct of the defendant as a ministerial officer. He merely executed the judgment of the House, pronouncing the plaintiff guilty of a breach of privilege and a high contempt. It was confessedly within the competency of the House to render such a judgment in some cases: such as that of a direct interruption of its proceedings by open violence within the walls. But from the plea, *non constat*, what was the nature of the offence committed by the plaintiff. Nor was it necessary that the plea should set out the facts constituting the contempt. It is sufficient for the protection of the officer that the House has jurisdiction to punish contempts, and that it had adjudged the plaintiff guilty of a contempt. The power of punishing contempts is incidental to all courts of justice, and even to the most inferior magistrates, when in the exercise of their public functions, and arises out of the absolute necessity of the case, which renders it indispensable that they should have such a power.

2. Each branch of the Legislature has certain powers of judicature under the Constitution, and the House of Representatives has the exclusive power of impeachment, which necessarily involves the authority of compelling the attendance of witnesses, and punishing them for contempt. Even Lord Holt, who was an enemy of the extravagant privileges of Parliament, admits that the power of impeachment residing in the House of Commons necessarily involved the authority of com-

committing the accused and of punishing contempts.* The powers of judging of elections and of punishing members for disorderly conduct necessarily involves all the incidents of judicature. Nothing appears upon the face of the record to show that it was not in the exercise of these very powers, or in defence of the admitted privileges of the House, that the warrant issued. It need not appear on the face of the warrant that the cause, out of which the contempt grew, was within the judicial powers of the House. The mere question between the ministerial officer and the offender is whether the warrant was issued by a court of competent jurisdiction, and whether he has pursued the precept in the manner of executing it. In other words, the only question is, whether the House has, in any case, the power of punishing contempts. If it has jurisdiction, it is a peculiar exclusive jurisdiction, and its exercise cannot be questioned or re-examined elsewhere. The doctrine is settled and established in this court, that the grant of the powers expressly given to Congress in the Constitution involves all the incidental powers necessary and proper to carry them into effect.† And the general grant of judicial powers to the courts of the United States, does not exclude the other branches of the Government from the exercise of certain portions of judicial authority. The different Departments of the Government could not be divided in this exact, artificial manner. They all run into each other. Even the President, though his functions are principally executive, has a portion of legislative power, and the Congress is invested with certain portions of judicial power. The whole of this subject has been thoroughly investigated in two recent cases in England, and the authorities cited on the argument of those cases renders it unnecessary to repeat a reference to them on the present occasion.‡ It is sufficient to say, that they fully estab-

* *Regina v. Paty* (2 Lord Raym, 1105).

† *McCulloch v. Maryland* (4 Wheat Rep., 316).

‡ *Burdett v. Abbott* (14 East's Rep., 1); *Burdett v. Colman* (*ib.* 163).

In these cases, the pleas by the Speaker and sergeant-at-arms of the House of Commons justified the supposed trespasses under a warrant *reciting* a resolution of the House that "a letter signed 'Sir Francis Burdett,' and a further part of a paper entitled, 'Argument,' in Cobbet's Weekly Register, of March 24, 1814, was a libellous and scandalous paper, reflecting on the just rights and privileges of that House; and that Sir Francis Burdett, who had admitted the letter and argument to have been printed by his authority, has been thereby guilty of a breach of the privileges of that House," and that it was thereupon ordered by the House, that the plaintiff, for his said offence, should be committed to the Tower; and that the Speaker should issue his warrants accordingly. The cases were carried from the court of king's bench to the exchequer chamber, where the judgments in favour of the defendants were affirmed upon the same grounds stated by the judges of the K. B. in East's Rep. The plaintiff, Sir Francis Burdett, having brought a writ of error to the House of Lords, the cause was argued for him by Mr. Brougham and Mr. Cournay, in the session of 1816-1817. After the counsel for the plaintiff in error had been heard, Lord Eldon (Ch.) proposed to their lordships that the counsel for the defendants should not be heard until the House should have received the opinion of the judges on the following question, viz: "Whether, if the court of common pleas, having adjudged an act to be a contempt of court, had committed for the contempt under a warrant, stating such adjudication generally, without the particular circumstances, and the matter were brought before the court of king's bench, by return to a writ of *habeas corpus*, the return setting forth the warrant, stating such adjudication of contempt generally; whether, in that case, the court of king's bench would discharge the prisoner, because the particular facts and circumstances out of which the contempt arose, were not set forth in the warrant."

The question being handed to the judges, and they having consulted among themselves for a few minutes, Lord Chief Baron Richards delivered their unanimous opinion that in such a case the court of king's bench would not liberate.

LORD ELDON (Ch.). That this is a case of very great importance none will dispute; but, at the same time, I do not think it a case of difficulty. If I did, I should be anxious to hear the counsel for the defendants before proceeding to judgment. But

lish the doctrine that a legislative body has, from the necessity of the case, a right to commit persons for contempt in breach of their privileges; that they are the exclusive judges whether those privileges have been violated in the particular instance; and that their decisions upon the subject cannot be questioned in any other court or place.

3. As to the form of the warrant, it is unnecessary to describe the offense particularly in the warrant, except for the purpose of letting the party see whether it is bailable or not.* But this was only a warrant to arrest the plaintiff and bring him before the House, a preliminary proceeding absolutely necessary to exercise any sort of jurisdiction over the matter.

Mr. Justice Johnson delivered the opinion of the court. Notwithstanding the range which has been taken by the plaintiff's counsel in the discussion of this cause the merits of it really lie in a very limited compass. The pleadings have narrowed them down to the simple inquiry whether the House of Representatives can take cognizance of contempts committed against themselves under any circumstances? The duress complained of was sustained under a warrant issued to compel the party's appearance, not for the actual infliction of punish-

in my view of the case, considering it as clear in law that the House of Commons have the power of committing for contempt; that this was a commitment for contempt; that the general nature of the contempt, if that was necessary, was sufficiently set forth in the warrant; and being of opinion that the objections, in point of form, have not been sustained, unless any other noble lord should express a wish to hear the counsel for the defendants, I shall now move that the judgments in the court below be affirmed.

LORD ERSKINE. When this matter was first agitated, I understood that the House of Commons intended to pursue a very different course. I was therefore alarmed. I expressed myself, because I felt, with warmth. I have changed none of the opinions I then entertained. I then said that the House of Commons ought to be jealous of such privileges as were necessary for its protection. My opinion is, that these privileges are part of the law of the land, and upon this record there is nothing more than the ordinary proceeding; the speaker of the House of Commons, like any other subject, putting himself on the country as to the fact, and pleading a justification in law; for this was not a plea to the jurisdiction, but a plea in bar. This course of proceeding gave rise to the most heartfelt satisfaction, for if the judgment had been adverse to the defendants the house would no doubt have submitted. It would be a libel on the House of Commons to suppose that it would not. Therefore, by this judgment, it appears that it is the law which protects the just privileges of the House of Commons, as well as the rights of the subject.

The case has been argued with great propriety; but it was contended that it was not alleged in the warrant that the libel was *published* by the plaintiff. But it is alleged that the paper was printed by his authority. And if I send a manuscript to the printer of a periodical publication, and do not restrain the printing and publishing of it, and he does print and publish it in that publication, then I am the publisher. The word *reflecting*, standing by itself, would not be sufficiently distinct. But the warrant recites that the letter had been adjudged to be a libellous and scandalous paper, reflecting on the just rights and privileges of the House of Commons; and the meaning there must be, arraigning the just rights and privileges of the house.

I, myself, while I presided in the court of chancery, committed for contempt, in a case in which a pamphlet was sent to me the object of which was, by partial representation, and by flattering the judge, to procure a different species of judgment from that which would be administered in the ordinary course of justice. I might be wrong, but I do not think I was. The House of Commons, whether a court or not, must, like every other tribunal, have the power to protect itself from obstruction and insult and to maintain its dignity and character. If the dignity of the law is not sustained, its sun is set, never to be lighted up again. So much I thought it necessary to say, feeling strongly for the dignity of the law; and have only to add that I fully concur in the opinion delivered by the judges.

The counsel were called in and informed that the house did not think it necessary to hear counsel for the defendants. And then, without further proceeding, the judgments of the court below were affirmed. (5 Dow's Parl. Rep., 165, 199.)

* Chitty's Crim. Law, and the authorities there cited.

ment for an offence committed. Yet it cannot be denied that the power to institute a prosecution must be dependent upon the power to punish. If the House of Representatives possessed no authority to punish for contempt, the initiating process issued in the assertion of that authority must have been illegal; there was a want of jurisdiction to justify it.

It is certainly true that there is no power given by the Constitution to either House to punish for contempts, except when committed by their own members. Nor does the judicial or criminal power given to the United States, in any part, expressly extend to the infliction of punishment for contempt of either House, or any one co-ordinate branch of the Government. Shall we, therefore, decide that no such power exists?

It is true that such a power, if it exists, must be derived from implication, and the genius and spirit of our institutions are hostile to the exercise of implied powers. Had the faculties of man been competent to the framing of a system of government which would have left nothing to implication, it cannot be doubted that the effort would have been made by the framers of the Constitution. But what is the fact? There is not in the whole of that admirable instrument a grant of powers which does not draw after it others, not expressed, but vital to their exercise; not substantive and independent, indeed, but auxiliary and subordinate.

The idea is utopian that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility and stated appeals to public approbation. Where all power is derived from the people, and public functionaries, at short intervals, deposit it at the feet of the people, to be resumed again only at their will, individual fears may be alarmed by the monsters of imagination, but individual liberty can be in little danger.

No one is so visionary as to dispute the assertion that the sole end and aim of all our institutions is the safety and happiness of the citizen. But the relation between the action and the end is not always so direct and palpable as to strike the eye of every observer. The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment.

But if there is one maxim which necessarily rides over all others, in the practical application of government, it is that the public functionaries must be left at liberty to exercise the powers which the people have intrusted to them. The interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers. The wretch beneath the gallows may repine at the fate which awaits him, and yet it is no less certain that the laws under which he suffers were made for his security. The unreasonable murmurs of individuals against the restraints of society have a direct tendency to produce that worst of all despotisms, which makes every individual the tyrant over his neighbour's rights.

That "the safety of the people is the supreme law," not only comports with, but is indispensable to, the exercise of those powers in their public functionaries, without which that safety cannot be guarded. On

this principal it is, that courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.

It is true that the courts of justice of the United States are vested, by express statute provision, with power to fine and imprison for contempts; but it does not follow, from this circumstance, that they would not have exercised that power without the aid of the statute, or not, in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution, or a legislative declaration, that the power of punishing for contempt shall not extend beyond its known and acknowledged limits of fine and imprisonment.

But it is contended that if this power in the House of Representatives is to be asserted on the plea of necessity, the ground is too broad, and the result too indefinite; that the executive, and every co-ordinate, and even subordinate, branch of the Government, may resort to the same justification, and the whole assume to themselves, in the exercise of this power, the most tyrannical licentiousness.

This is unquestionably an evil to be guarded against, and if the doctrine may be pushed to that extent, it must be a bad doctrine, and is justly denounced.

But what is the alternative? The argument obviously leads to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may meditate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people, and charged with the care of all that is dear to them; composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation; whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire; that such an assembly should not possess the power to suppress rudeness or repel insult is a supposition too wild to be suggested. And, accordingly, to avoid the pressure of these considerations, it has been argued that the right of the respective Houses to exclude from their presence, and their absolute control within their own walls, carry with them the right to punish contempts committed in their presence; while the absolute legislative power given to Congress within this district enables them to provide by law against all other insults against which there is any necessity for providing.

It is to be observed that, so far as the issue of this cause is implicated, this argument yields all right of the plaintiff in error to a decision in his favour; for, *non constat*, from the pleadings, but that this warrant issued for an offence committed in the immediate presence of the House.

Nor is it immaterial to notice what difficulties the negation of this right in the House of Representatives draws after it when it is considered that the concession of the power, if exercised within their walls, relinquishes the great grounds of the argument, to wit: the want of an express grant, and the unrestricted and undefined nature of the power

here set up. For why should the House be at liberty to exercise an ungranted, an unlimited, and undefined power within their walls any more than without them? If the analogy with individual right and power be resorted to it will reach no farther than to exclusion, and it requires no exuberance of imagination to exhibit the ridiculous consequences which might result from such a restriction imposed upon the conduct of a deliberative assembly.

Nor would their situation be materially relieved by resorting to their legislative power within that District. That power may, indeed, be applied to many purposes, and was intended by the Constitution to extend to many purposes indispensable to the security and dignity of the General Government; but they are purposes of a more grave and general character than the offences which may be denominated contempts, and which, from their very nature, admit of no precise definition. Judicial gravity will not admit of the illustrations which this remark would admit of. Its correctness is easily tested by pursuing, in imagination, a legislative attempt at defining the cases to which the epithet *contempt* might be reasonably applied.

But although the *offence* be held undefinable, it is justly contended that the *punishment* need not be indefinite. Nor is it so.

We are not now considering the extent to which the punishing power of Congress by a legislative act may be carried. On that subject the bounds of their power are to be found in the provisions of the Constitution.

The present question is, what is the extent of the punishing power which the deliberative assemblies of the Union may assume and exercise on the principle of self-preservation?

Analogy and the nature of the case furnish the answer—"the least possible power adequate to the end proposed;" which is the power of imprisonment. It may at first view, and from the history of the practice of our legislative bodies, be thought to extend to other inflictions. But every other will be found to be mere commutation for confinement, since commitment alone is the alternative where the individual proves contumacious. And even to the *duration* of imprisonment a period is imposed by the nature of things, since the existence of the power that imprisons is indispensable to its continuance; and although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment.

This view of the subject necessarily sets bounds to the exercise of a caprice which has sometimes disgraced deliberative assemblies, when under the influence of strong passions or wicked leaders, but the instances of which have long since remained on record only as historical facts, not as precedents for imitation. In the present fixed and settled state of English institutions there is no more danger of their being revived, probably, than in our own.

But the American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice, under the specious appearance of merited resentment.

If it be inquired what security is there that, with an officer avowing himself devoted to their will, the House of Representatives will confine its punishing power to the limits of imprisonment, and not push it to the infliction of corporal punishment, or even death, and exercise it in cases affecting the liberty of speech and of the press, the reply is to be found

in the consideration that the Constitution was formed in and for an advanced state of society, and rests at every point on received opinions and fixed ideas. It is not a new creation, but a combination of existing materials, whose properties and attributes were familiarly understood, and had been determined by reiterated experiments. It is not, therefore, reasoning upon things as they are to suppose that any deliberative assembly constituted under it would ever assert any other rights and powers than those which had been established by long practice and conceded by public opinion. Melancholy, also, would be that state of distrust which rests not a hope upon a moral influence. The most absolute tyranny could not subsist where men could not be trusted with power because they might abuse it, much less a Government which has no other basis than the sound morals, moderation, and good sense of those who compose it. Unreasonable jealousies not only blight the pleasures, but dissolve the very texture of society.

But it is argued that the inference, if any, arising under the Constitution is against the exercise of the powers here asserted by the House of Representatives; that the express grant of power to punish their members respectively, and to expel them, by the application of a familiar maxim, raises an implication against the power to punish any other than their own members.

This argument proves too much; for its direct application would lead to the annihilation of almost every power of Congress. To enforce its laws upon any subject without the sanction of punishment is obviously impossible. Yet there is an express grant of power to punish in one class of cases and one only, and all the punishing power exercised by Congress in any cases, except those which relate to piracy and offences against the laws of nations, is derived from implication. Nor did the idea ever occur to any one that the express grant in one class of cases repelled the assumption of the punishing power in any other.

The truth is, that the exercise of the powers given over their own members was of such a delicate nature that a constitutional provision became necessary to assert or communicate it. Constituted, as that body is, of the delegates of confederated States, some such provision was necessary to guard against their mutual jealousy, since every proceeding against a representative would indirectly affect the honour or interests of the State which sent him.

In reply to the suggestion that on this same foundation of necessity might be raised a superstructure of implied powers in the Executive and every other Department, and even ministerial officer of the Government, it would be sufficient to observe that neither analogy nor precedent would support the assertion of such powers in any other than a legislative or judicial body. Even corruption anywhere else would not contaminate the source of political life. In the retirement of the cabinet it is not expected that the Executive can be approached by indignity or insult; nor can it ever be necessary to the Executive, or any other Department, to hold a public deliberative assembly. These are not arguments; they are visions which mar the enjoyment of actual blessings, with the attack or feint of the harpies of imagination.

As to the minor points made in this case, it is only necessary to observe that there is nothing on the face of this record from which it can appear on what evidence this warrant was issued. And we are not to presume that the House of Representatives would have issued it without duly establishing the fact charged on the individual. And,

as to the distance to which the process might reach, it is very clear that there exists no reason for confining its operation to the limits of the District of Columbia; after passing those limits, we know no bounds that can be prescribed to its range but those of the United States. And why should it be restricted to other boundaries? Such are the limits of the legislating powers of that body; and the inhabitant of Louisiana or Maine may as probably charge them with bribery and corruption, or attempt, by letter, to induce the commission of either, as the inhabitant of any other section of the Union. If the inconvenience be urged, the reply is obvious; there is no difficulty in observing that respectful deportment which will render all apprehension chimerical.

Judgment affirmed.

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA FOR THE COUNTY OF
WASHINGTON—MARCH TERM, 1848.

JOHN NUGENT v. ROBERT BEALE, SERGEANT-AT-ARMS OF THE U. S.
SENATE.

[At law. Decided May 11, 1848.]

PETITION FOR DISCHARGE ON WRIT OF HABEAS CORPUS.

1. Every court, including the Senate and House of Representatives, is the sole judge of its own contempts; and in case of commitment for contempt, in such case, no other court can have a right to inquire *directly* into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus.
2. The warrant of commitment need not set forth the particular facts which constitute the alleged contempt.
3. The Senate of the United States has power to punish for contempts of its authority in cases of which it has jurisdiction, and an inquiry whether any person, and who, had violated the rule of the Senate which requires that all treaties laid before them should be kept secret until the Senate should take off the injunction of secrecy is a matter within the jurisdiction of the Senate.
4. The Senate of the United States has a right to hold secret sessions whenever in its judgment the proceeding shall require secrecy, and may pronounce judgment in secret session for a contempt which took place in secret session.

JOSEPH H. BRADLEY and J. M. CARLISLE for petitioner.

R. S. COXE for the Senate.

The petition for the writ of habeas corpus stated that the said John Nugent was held in custody and close confinement by Robert Beale, of the city of Washington, without any authority or warrant of law; and that the said Robert Beale has refused to exhibit to the petitioner the authority, if any, under which he pretends to hold him, and to give him a copy thereof, and to discharge him from custody, &c.

The writ of habeas corpus was thereupon issued by the court on the 3d of April, 1848, returnable on the 4th.

The return stated that "the said Robert Beale holds the office of Sergeant-at-Arms of the Senate of the United States; that the said Senate is, and has been long before the arrest of the said John Nugent, holding its regular sessions; that certain proceedings were had before the said Senate, in executive sessions, which said proceedings are, by the rules and orders of said Senate, had in secret session, and which the respondent can not, without violation of his official oath and duty, divulge or make public. That this respondent, as such Sergeant-at-Arms, has received from the Hon. G. M. Dallas, Vice-President of the United States and President of the Senate, a warrant, by which he is ordered and directed, authorized and required, to take into his custody the body of the said John Nugent and him safely keep according to the

terms of said preceptor or warrant. That in obedience to the order and command of the said Senate of the United States, this respondent, as in duty bound, has arrested and now holds the body of the said John Nugent in legal custody, and now produces and exhibits to the court now here the said order, precept, and warrant, as the cause of the caption and detention by him as aforesaid of the body of the said John Nugent, as part of this his return."

This return was accompanied by the warrant, as follows:

UNITED STATES OF AMERICA—

To the Sargeant-at-Arms of the Senate of the United States, Robert Beale:

Whereas John Nugent, having been summoned, and having appeared at the bar of the Senate, and having been sworn as a witness, he answered the following interrogatories:

1. Have you any connection with or agency for the proprietor of the newspaper published in the city of New York, and called the New York Herald? If yea, state what is that connection or agency.

2. Do you know that an instrument purporting to be a copy of the treaty between the United States of America and the Mexican Republic, with the amendments made by the Senate thereto, and the proceedings of the Senate thereon, was published in that newspaper? Declare.

3. Do you know by whom the copy of the instrument, with the amendments thereto and proceedings thereon in the last preceding interrogatory specified, was furnished to the editor or publishers, or any agent of the editor or publishers of the said newspaper called the New York Herald? If yea, declare and specify such person or persons.

4. Did you copy the parts purporting to be amendments of the treaty yourself for the purpose of sending them to the editor of the New York Herald, or for any other purpose? If you answer in the negative, then say if you know by whom they were copied.

5. Where, at what place or house, and at what time, were the said amendments of the treaty copied?

And having refused to answer the following interrogatories:

6. Where, in what place or what house, and at what time, did you first receive a printed copy of the confidential document containing the treaty, the President's message, and also the other confidential documents printed in the Herald?

7. In answer to the third interrogatory, you have stated that you furnished the papers therein referred to, to the editor of the New York Herald. State from whom you received the said treaty with Mexico, with the amendments and the said portion of the proceedings of the Senate.

8. In your answer to the fourth interrogatory, you state that the amendments there referred to were communicated to the Herald in your handwriting. Did you copy the same, and from whom did you procure the original from which you copied the same?

9. You say in answer to the last question that you decline to answer the same, because you can not answer it with accuracy. State why you can not answer it with accuracy. Is it because you do not recollect the facts inquired of?

10. What portion of the facts do you not recollect with accuracy; is it as to the person from whom you obtained the papers, or either of them referred to?

11. State from whom you received the treaty.

12. State from whom you received the documents.

13. State from whom you received the proceedings of the Senate heretofore inquired of.

14. Was the copy of the treaty you forwarded to the Herald a printed copy?—

—has, by so refusing, committed a contempt against the Senate; and has, by the Senate, been ordered into the custody of the Sergeant-at-Arms, there to remain until the further order of the Senate.

These are, therefore, to authorize and require you, and you are hereby authorized and required to take into your custody the body of the said John Nugent, and him safely keep until he answers the said interrogatories, or until the further order of the Senate of the United States in this behalf, and for so doing this shall be your sufficient warrant.

Given under my hand this thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-eight.

G. M. DALLAS,

Vice-President of the United States and President of the Senate.

Attest:

ASBURY DICKENS,

Secretary of the Senate of the United States.

Mr. Coxe addressed the court, and explained the cause of the prisoner's detention.

Mr. Bradley argued to show that the court had jurisdiction in the case, entering into the doctrine of parliamentary privilege, and the jurisdiction for which he contended was such as had been exercised in the highest judicial tribunals in England. Mr. Carlisle followed on the same side.

Mr. Coxe maintained and endeavored to show by reference to the law and usage of Parliament and the English courts that the court had no jurisdiction in the case.

CRANCH, C. J., delivered the opinion of the court:

Upon this return of the habeas corpus the principal questions are:

Has the Senate of the United States jurisdiction and power to punish contempts of its authority? And if so,

Whether this court, upon this habeas corpus, can inquire into the question of contempt and discharge the prisoner.

The jurisdiction of the Senate in cases of contempt of its authority depends upon the same grounds and reasons upon which the acknowledged jurisdiction of other judicial tribunals rests, to wit, the necessity of such a jurisdiction to enable the Senate to exercise its high constitutional functions—a necessity at least equal to that which supports the like jurisdiction which has been exercised by all judicial tribunals and legislative assemblies in this country from its first settlement, and in England from time immemorial. That the Senate of the United States may punish contempts of its authority seemed to be admitted by the prisoner's counsel, provided it be in a case within their cognizance and jurisdiction; but whether admitted or not, such is the law as laid down by the Supreme Court of the United States in *Anderson v. Dunn*, 6 Wheat., 224, and in *Kearney's Case*, 7 Wheaton, 41.

Kearney's case was a petition to the Supreme Court of the United States for a habeas corpus to the marshal, D. C., to bring up the body of J. T. Kearney, who was committed by the circuit court, District of Columbia, for contempt in refusing to answer a question in a criminal cause.

Mr. Justice Story, in delivering the opinion of the court, after citing *Brass Crosby's case* with approval, said (in p. 44):

So that it is most manifest from the whole reasoning of the court in this case that a writ of habeas corpus was not deemed a proper remedy where a party was committed for a contempt by a court of competent jurisdiction, and that if granted the court could not inquire into the sufficiency of the cause of commitment. If, therefore, we were to grant the writ in this case it would be applying it in a manner not justified by principle or usage, and we should be bound to remand the party unless we were prepared to abandon the whole doctrine, so reasonable, just, and convenient, which has hitherto regulated this important subject.

The same law was declared by the court of common pleas, in the year 1771, in *Brass Crosby's Case*, 3 Wils., 188, in which (in p. 201) *Ld. Ch. J. De Grey* said:

Perhaps a contempt in the House of Commons, in the chancery, in this court, and in the court of Durham may be very different; therefore, we can not judge of it; *but every court must be sole judge of its own contempts*. Besides, as the court can not go out of the return of this writ, how can we inquire into the truth of the fact as to the nature of the contempt? We have no means of trying whether the lord mayor did right or wrong.

And in p. 202, he says:

There is a great difference between matters of privilege coming *incidentally* before the court and being *the point itself directly* before the court. *The counsel at the bar*

have not cited one case where any court of this hall ever determined a matter of privilege which did not come incidentally before them.

But the present case differs much from those which the court will determine, because it does not come incidentally before us, but is brought before us *directly and is the whole point in question*; and to determine it we must supersede the judgment and determination of the House of Commons and a commitment "in execution of that judgment."

Mr. Justice Gould, in the same case, p. 203, said:

I entirely concur in opinion with *my Lord Ch. J.*, that this court hath no cognizance of contempts or breach of privilege of the House of Commons. "*They are the only judges of their own privileges.*"

And in page 204, he says:

When matters of privilege come *incidentally* before the court, it is obliged to determine them to prevent a failure of justice. The resolution of the House of Commons is an adjudication, *and every court must judge of its own contempts.*

Mr. Justice Blackstone, in the same case, said:

I concur in opinion that we can not discharge the lord mayor. The present case is of great importance, because the liberty of the subject is materially concerned. The House of Commons is a supreme court, and they are judges of their own privileges and contempts, more especially with respect to their own members. Here is a member committed *in execution* by the judgment of his own house. *All* courts, by which I mean to include the two Houses of Parliament and the courts of Westminster Hall, are uncontrolled in matters of contempt. The *sole* adjudication of contempts and the punishment thereof in any manner, belongs *exclusively*, and without interfering, to *each respective court*. Infinite confusion and disorder would follow if courts could, *by writ of habeas corpus*, examine and determine the contempts of others. This power to commit results *from the first principles of justice*; for if they have power to decide, they ought to have power to punish; no other court shall scan the judgment of a superior court, or the principal seat of justice. As I said before, it would occasion the utmost confusion if every court of this hall should have power to examine the commitments of the other courts of the hall for contempts; so that the judgment and commitment of each respective court, as to contempts, must be final and without control.

This case of Crosby was decided by the court of common pleas in the year 1771, and, as Mr. Justice Story said, in delivering the opinion of the Supreme Court of the United States in Kearney's Case, p. 43, *settled the law upon that point*. It must be remembered that the case of Crosby was upon habeas corpus, and the court could not give relief without assailing the judgment of the House of Commons directly and revising that judgment; but when the judgment of contempt comes before the court incidentally, or collaterally, its correctness may be questioned; as in cases where it is pleaded in justification, as was done in the case of *Anderson v. Dunn*, 6 Wheat., 204.

The law, as stated by the court in Crosby's Case, was the law of the land, both in this country and in England before our revolution, and has so continued to the present time.

In the case of *Stockdale v. Hansard*, for a libel, the defendant pleaded, in justification, an order of the House of Commons to print and publish the report of the inspectors of prisons, which contained the supposed libel. To this plea the plaintiff demurred, and assigned for causes: "That the known and established laws of the land can not be superseded, suspended, or altered by any resolution or order of the House of Commons, and that the House of Commons, in Parliament assembled, can not by any resolution or order of themselves, create any new privilege to themselves inconsistent with the known laws of the land, and that if such power be assumed by them, there can be no reasonable security for the life, liberty, property or character of the subjects of the realm."

The case was learnedly and elaborately argued in the year 1837, and decided in 1839 by the court of queen's bench.

One of the questions raised in the argument was whether the House of Commons had the right to assume the authority to settle its own privilege, and to be the sole judge of its existence and extent.

In p. 20, the attorney-general, Campbell, said: "Another and a summary remedy might have been adopted; that the House, having confidence in the tribunals of the country, deems it expedient to refer the case to the consideration of the court in the ordinary course of justice, *thereby* giving to the plaintiff an opportunity either of denying that the act was done under the alleged authority, or of showing that the authority has been exceeded."

In p. 22, he says, "here" (i. e., upon *demurrer* to the plea of justification under the order of the House of Commons), "the question of privilege is *directly* raised and can not, therefore, be inquired into by a court of common law." And again he says, in p. 23:

The most frequent cases in which the privilege of the Houses of Parliament has come in question directly, have been cases of habeas corpus on commitments by them, and there the courts of common law have disclaimed jurisdiction. So the question would arise *directly* if an action of trespass or false imprisonment were brought for such a commitment, and wherever it might be sought to overrule an act done by either House and justified by its authority. The present [he says] is a case of that description. If the complaint appears on the record to be made against an act of one of the Houses, so that the court is called upon to say whether the privilege alleged in justification belongs to the house, or is usurped, the point of privilege arises *directly*, whether raised by the declaration or by any subsequent pleading. With a question of privilege, raised *incidentally*, the court must deal as it best can. In such a case necessity may require that the existence of the privilege should be examined into; but the necessity which makes the rule points out its limit. Where an act of either House is complained of, no such necessity can exist. Here an adjudication has been made on the very point, and by a court of exclusive jurisdiction; and such an adjudication is binding.

So much of the argument of the attorney-general in the case of *Stockdale v. Hansard* seemed necessary to be stated that the opinion of Ld. Ch. J. Denman might be understood. The attorney-general contended (1), that when the question of privilege came *directly* before the court, it could not inquire into it; and (2), that in the case then before him, it did come directly in question.

In support of the first proposition he cited the following cases, all of which were cases of habeas corpus:

1. Sir Robt. Pye's Case, cited in 5 How. St. Tr., 948.
2. Lord Shaftsbury's Case, 6 How. St. Tr., 1269, S. C.; 1 Mod., 144; 3 Keb., 792, in which Sir Thomas Jones, justice, said: "The cases where the courts of Westminster Hall have taken cognizance of privilege differ from this case; for in those it was only an *incident* to a case before them which was of their cognizance; the *direct point* of the matter now is the judgment of the lords. This court can neither bail nor discharge the earl."

Wylde, Rainsford, and Twisden, justices, concurred.

3. Captain Streater's Case, 5 How. St. Tr., 366.
4. The Protector and Captain Streater, Style 415.
5. *Regina v. Paty*, 2 Lord Raymond, 1105, in which *eleven* of the twelve judges agreed that the court of queen's bench had no jurisdiction in the case of Parliamentary commitment, and could not discharge the prisoners. But in that case,

Holt, Ch. J., who was the dissenting judge, said, in p. 1114, "as to what was said that the House of Commons are judges of their own privileges, *that they are so when it comes before them*. And as to the

instances cited, where the judges have been cautious in giving any answer in Parliament in matters of privilege of Parliament, he said the reason of that was because the members knew probably their own privilege better than the judges, but when a matter of privilege *comes in question in Westminster Hall*, the judges must determine it, as they did in Bynion's Case.

6. Alexander Murray's Case, decided in B. R., *anno* 1751, 1 Wilson, 299, upon habeas corpus, in which Wright, J., said:

The House of Commons is undoubtedly a high court, and it is agreed on all hands that they have power to judge of their own privileges; it need not appear to us what the contempt was, for if it did appear we could not judge thereof.

Dennison, J., added:

This court has no jurisdiction in the present case. We granted the habeas corpus, not knowing what the commitment was; but now it appears to be for a contempt of the privileges of the House of Commons. What those privileges (of either House) are we do not know, nor need they tell us what the contempt was, because we can not judge of it.

7. Brass Crosby's Case, 2 W. Bl., 754, upon habeas corpus, in which the counsel of the prisoner contended that the offense stated in the warrant of commitment was no contempt, and that that court had a right to judge of the privileges of the House of Commons; and was often obliged to take notice of them *incidentally*, as in Mr. Wilkes' Case. *But the court said:*

They never discharge persons committed for contempt by any supreme court. That the law intrusted to these the power of judging of their own contempts.

8. In the case of Alderman Oliver, 2 W. Bl., 758, which was the same in its circumstances with that of Lord Mayor Crosby, a habeas corpus was sued out in the court of exchequer, and a like judgment was given by the unanimous opinion of the barons.

9. In *Rex v. Fowler*, 8 T. R., 314, Lord Kenyon said: "We were bound to grant this habeas corpus; but having seen the return, we are bound to remand the defendant to prison, because the subject belongs *ad aliud examen*;" and Gross, J., said:

That the adjudication of the House on a contempt was a conviction, and the commitment, in consequence, execution; that every court must be sole judge of its own contempts, and that no case appeared in which any court of Westminster Hall ever determined a matter of privilege which did not come *incidentally* before them.

10. In *Rex v. Hobhouse*, 2 Chit. Rep., 207, the commitment was by the House of Commons for a contempt in publishing a libel. The court said:

The cases of Lord Shaftsbury and *Rex v. Paty* are decisive authorities to show that the courts of Westminster Hall can not judge of any law, custom, or usage, and consequently that they can not discharge a person committed for a contempt of Parliament. *The power of commitment for contempt is incident to every court of justice, and more especially it belongs to the high court of Parliament;* and therefore it is incompetent for this court either to question the privileges of the House of Commons or a commitment for an offense which they have adjudged to be a contempt of those privileges.

11. In *Burdett v. Colman*, 14 East., 163, *the action was for false imprisonment*, and the defendant, an officer of the House of Commons, pleaded the order of the House in justification and was acquitted. The case was taken up to the House of Lords, where it was held that the complaint was answered *and that the warrant of commitment would have sufficed on a return to a habeas corpus*.

12. In the case of *Stockdale v. Hansard*, Adolphus and Ellis, 1, 36 Com. L. Rep., 94, Ch. J. Denman said:

But as to these proceedings by habeas corpus, it may be enough to say that the present is not of that class, and that when any such may come before us we will deal with it as in our judgment the law may appear to require.

Again, in the same case, p. 79, 36 Com. L. Rep., Ch. J. Denman says:

But even supposing this court would be bound to remand a prisoner committed by the House for a contempt, however insufficient the cause set out in the return, that could only be in consequence of the House having jurisdiction to *decide upon contempts*. In this case we are not trying the right of a subject *to be set free from imprisonment for contempt*, but whether the order of the House of Commons is of power to protect a wrongdoer *against making reparation* to the injured man.

Again, Ch. J. Denman (in p. 82) in the same case said:

The other concession [of the attorney-general] to which I allude is that when matter of privilege comes before the courts, *not directly but incidentally*, they may, because they must, decide it. Otherwise, said the attorney-general, there must be a failure of justice. And such has been the opinion even of those judges who have spoken with the most profound veneration of privilege. The rule is difficult of application.

In the same case (*Stockdale v. Hansard*, p. 93, 36 C. L. Rep.), Little-dale, J., says:

But it is said that the question of the privilege of the House of Commons comes *directly* before the court upon the pleadings; and that, therefore, *upon all authorities*, it is quite clear it is not competent to this court to inquire into the question of privilege; and it is said that it is in effect the same case in principle as *Burdett v. Abbott*, 14 East., 1, and that it was there held that the defense, being founded in the order of the House to do the thing complained of, raised the question of privilege *directly*, and that the court could not investigate the legality of that order. But this differs very materially from *Burdett v. Abbott*. That was an *action* against the speaker himself for an act done by him in the House. The act done by him was to commit an individual whom the House adjudged to be *guilty of a contempt to the House*, and who had been, for that, ordered to be taken into custody; and there was a specific order of the House as to the particular thing to be done; but this case is altogether different; these defendants are not members of the House, but agents employed by them. The plaintiff is a perfect stranger to the House. He has been guilty of no insult or contempt of the House; and there is no order of the House applicable to him. He stands, therefore, in the situation of a stranger to the House, complaining of persons who are not members of the House, but merely employed to distribute their papers. Lord Ellenborough, in the course of his judgment, says (14 East., 138) that independently of any precedents or recognized practice on the subject, such a body as the House of Commons must, *a priori*, be armed with a competent authority to enforce the free and independent exercise of its own proper functions, whatever those functions may be. But yet when he comes to the summoning up the points for the consideration of the court, and gives the first part of his judgment, he says, first, that "it is made out that the power of the House of Commons to commit for contempt stands upon the ground of reason and necessity, independent of any positive authorities upon the subject; but it is also made out by the evidence of usage and practice, by legislative sanction and recognition, and by the judgments of the courts of law, in a long course of well-established precedents and authorities" (14 East., 158). I admit that it is very difficult to draw the line between the question of privilege of coming *directly* before the court and where it comes *incidentally*; the shades of difference run into one another. The decisions and dicta of the judges who have said that the House of Commons are the only judges of their own privileges, and that the courts of common law can not be judges of the privileges of the House of Commons, are chiefly where the question has arisen on *commitments for contempt*, upon which no doubt could ever be entertained, but that the House are the only judges of what is a contempt to their House generally, or to some individual member of it; but no case has occurred where the courts or judges have used any expressions to show that they are concluded by the resolution of the House of Commons in a case like the present.

Again, in p. 94, 36 Com. L. R., he says:

There is no doubt about the right, as exercised by the two Houses of Parliament in regard to *contempts* or insults offered to the House, either within or without their walls, and as to any other thing which may appear to be necessary to carry

on and conduct the great and important functions of their charge. In the case of *commitments for contempts*, there is no doubt but that the House is the sole judge whether it is contempt or not, and the courts of common law will not inquire into it. The greatest part of these decisions and dicta, where the judges have said that the Houses of Parliament are the sole judges of their own privileges, have been where the question has arisen upon *commitments for contempt*, and as to which, as I have before remarked, no doubt can be entertained.

But not only the two Houses of Parliament, but every court in Westminster Hall, are themselves the sole judges whether it be a contempt or not, although in cases where the court did not profess to commit for a contempt, but for some matter which by no reasonable intendment could be considered as a contempt to the court committing, but a ground of commitment palpably and evidently *unjust and contrary to law and natural justice*, Lord Ellenborough says that in the case of such a commitment, if it should ever occur (but which he said he could not possibly anticipate as ever likely to occur), the court must look at it and act upon it *as justice may require*, from whatever court it may profess to have proceeded.

Again, Littledale, J., in p. 102, says: "I therefore, upon the whole of this case, again point out what Lord Ellenborough very much relied upon in his judgment in *Burdett v. Abbott*, 14 East., 158, when he said that 'it is made out that the power of the House of Commons to commit for contempt stands upon the ground of reason and necessity, independent of any positive authorities on the subject; but it is also made out by the evidence of usage and practice, by legislative sanction and recognition, and by the judgments of the courts of law in a long course of well-established precedents and authorities; but in the case now before the court (*Stockdale v. Hansard*) I think that the power of the House of Commons to order the publication of papers containing defamatory matter, does not stand on the ground of reason and necessity, independent of any positive authorities on the subject. And I also think that it is not made out by the evidence of usage and practice, by legislative sanction, and recognition in the courts of law in a long course of well-established precedents and authorities."

In the same case (*Stockdale v. Hansard*), p. 107, 36 Com. L. Rep., Patteson, J., said: "It is indeed quite true that the members of each House of Parliament are the sole judges whether their privileges have been violated, and whether thereby any person has been guilty of a contempt of their authority; and so they must adjudicate on the extent of their privileges. All the cases respecting commitments by the House, mostly raised upon writs of *habeas corpus*, and collected in the arguments and judgments in *Burdett v. Abbott*, 14 East., 1, establish, at the most, only these points, that the House of Commons has power to commit for contempt; and that when it has so committed any person the court can not question the propriety of such commitment, or inquire whether the person committed had been guilty of a contempt of the House, in the same manner as this court can not entertain any such questions if the commitment be by any other court having power to commit for contempt. In such instances there is an adjudication of a court of competent authority in the particular case; and the court which is desired to interfere, not being a court of error or appeal, can not entertain the question whether the authority has been properly exercised.

"In order to make cases of *commitment* bear upon the *present*, some such case should be shown in which the power of the House of Commons to commit for contempt under any circumstances was denied, and in which this court had refused to enter into the question of the existence of that power. But no such case can be found, because it has always been held that the House had such power; and the point attempted to be raised, in the cases of commitment, has been as to the due exercise of such power. The other cases which have been cited in argument relate generally to the privileges of individual members, not

to the power of the House itself acting as a body; and hence, as I conceive, has arisen the distinction between a question of privilege coming *directly* or *incidentally* before a court of law. It may be difficult to apply the distinction. Yet it is obvious that, upon an application for a writ of habeas corpus by a person committed by *the House*, the question of the power of the House to commit, or of the due exercise of that power, is the original and primary matter propounded to the court, and arises *directly*. Now, as soon as it appears that the House has committed the person for a cause within their jurisdiction, as, for instance, a contempt *so adjudged by them to be*, the matter has passed *in rem judicatum*, and the court before which the party is brought by writ of habeas corpus must remand him. *But if an action be brought* in this court for a matter over which the court has general jurisdiction, as, for instance, for a libel, or for an assault and imprisonment, and *the plea first declares* that the authority of the House of Commons, or its powers, are not in any way connected with the case, the question may be said to arise incidentally. The court must give some judgment—must somehow dispose of the question. I do not, however, lay any great stress on this distinction. It seems to me that if the question arises *in the progress of a cause*, the court must of necessity adjudicate upon it, whether it can be said, in strict propriety of language, to arise *directly* or *incidentally*.”

In the same case (*Stockdale v. Hansard*, pp. 121, 122), Coleridge, J., said: “I know it will be said that in many of the cases alluded to the question of privilege has arisen *incidentally* only, and that in such, *ex necessitate*, the courts have interfered. In what sense ‘*incidentally*’ is here used, has been often asked, and never, as yet, satisfactorily answered. In what sense a greater necessity exists in one case than the other, has not been made out. The cases of habeas corpus are generally put as instances where the question arises *directly*. Let me suppose the return to state a commitment by the speaker under a resolution of the House ordering the party to capital punishment for a larceny committed; it will hardly be said that a stronger case of necessity to interfere could be supposed; and yet it must be admitted, on the other hand, the question of *privilege* or *power* (between which the argument for the defendants makes no difference) would arise *directly*. A case, therefore, may be supposed in which it would be necessary to interfere, even when the so doing would be a direct adjudication upon the act of the House. It should seem, then, that some other test must be applied to ascertain in what sense it is true that the House can alone declare and adjudicate upon its own privileges.”

“I venture with great diffidence to submit the view which I have taken of these embarrassing questions, not as claiming the suspicious merit of novelty, but as one which will at least remove all difficulties in theory, and be found, I believe, not inconsistent with the general course of authorities. I say *general course*, for during so long a series, carried through times so differing in political bias and between such parties as either House of Parliament on one side, and the courts of law, individual judges, or litigant suitors on the other, it would be quite idle to expect that any one uniform principle should be found to have invariably prevailed.”

“In the first place, I apprehend that the question of privilege arises *directly* wherever the House has adjudicated upon the very fact between the parties, and there only. Wherever *this* appears, and the case *may be* one of privilege, no court ought to inquire whether the House has adjudicated properly or not. But whether directly arising or not, a

court of law, I conceive, must take notice of the distinction between *privilege* and *power*; and where the act has not been done *within the House* (for of no act there done can any tribunal, in my opinion, take cognizance but the House itself) and is clearly of a nature transcending the legal limits of privilege, *it* (the court) will proceed against the doer as a transgressor of the law."

"To apply these principles to the case in which, on the return of a habeas corpus, it appears that the House has committed for a contempt in the breach of its privileges, I subscribe entirely to the decisions, and I agree also with the *dicta* which, in some of them, this court has thrown out on supposed extreme cases. In every one of these cases the House has actually adjudicated on the very point raised in the return, and the committal is in execution of its judgment. In all of them the warrant, or order, has set out that which, on the face of it, either clearly is, or may be, a breach of privilege; or it has contented itself with stating the party to have been guilty of a contempt, without specifying the nature of it or the acts constituting it. Brass Crosby's Case, 3 Wils., 188, is an instance of the former; Lord Shaftsbury's Case, 1 Mod., 144, of the latter. The difference between the two is immaterial on the present question, which is one of jurisdiction only. Although, in the case of an inferior court over which this court exercises a power of revision and control, even in matters directly within their cognizance, it will require to see the cause of committal, in the warrant, yet with regard to courts of so high a dignity as the Houses of Parliament, if an adjudication be stated generally, *for a contempt, as contempts are clearly within their cognizance*, a respectful and a reasonable intendment will be made that the particular facts on which the committal in question has proceeded, warranted it in point of jurisdiction, for (that being assumed), the propriety of the adjudication would, of course, not be inquired into. But in both cases the principle of the decision is that there has been an adjudication by a court of competent jurisdiction. Thus, in the former, De Grey, Ch. J., says: 'When the House of Commons *adjudge* anything to be a contempt, or a *breach* of privilege, their adjudication is a *conviction*, and their commitment in consequence is *execution*; and no court can discharge or bail a person that is in execution by the judgment of any other court. The House of Commons, therefore, *having an authority to commit*, and that commitment being an execution, the question is, What can this court do? It can do nothing when a person is in execution by the judgment of a court of competent jurisdiction. In such case this court is not a court of appeal.' And in the latter, in which the main contest was on the *generality* of the order of the lords, Rainsford, Ch. J., says (1 Mod., 158): 'The commitment, in this case, is not for safe custody, but he is *in execution on the judgment given by the lords for the contempt*; and, therefore, if he be bailed he will be delivered out of execution; because for contempt *in facie curiæ*, there is no other judgment or execution.'

"The same principle will explain and justify the observations which have been made by different judges from time to time, with regard to supposed cases, even of direct adjudication; and if it should appear that the vice alleged against the proceeding is not of improper decision, or excess of punishment, but a total want of jurisdiction; in other words, where it is contended that either House has not acted *in the exercise of a privilege, but in the usurpation of a power*, it can not be doubted that the same judges *who* were most cautious in refraining from interfering with privilege, properly so called, would have asserted the right of the court to restrain the undue exercise of power. The

fact of the adjudication, *then*, has no weight, because the court adjudging had no jurisdiction. Many such instances have been referred to in the argument. I pass over the luminous and, as I think, still unanswered judgment of Lord Holt in *Regina v. Paty*, 2 Ld. Raym., 1012, and the judgments, etc., cited, p. 39, which is bottomed *on this principle*; but I will cite, by way of illustration, the *diata* of Lord Kenyon and Lord Ellenborough, whom I select, not only for their preeminent individual authority, but also because I can cite from their judgments in cases in which they were, with a firm and favorable hand, upholding the just privileges of the Commons. And it is satisfactory to see that the *distinction* was even then present to their minds."

"Ld. Kenyon, in *Rex v. Wright*, 8 T. R., 296, after saying 'this is a proceeding of one branch of the legislature, and, therefore, we can not inquire into it,' immediately qualifies the generality of that remark, by adding, 'I do not say that cases may not be put in which we would inquire whether or not the House of Commons were justified in any particular measure; if, for instance, they should send their sergeant-at-arms to arrest a counsel here who was arguing a case between two individuals; or to grant an injunction to stay proceedings here in a common action, undoubtedly we should pay no attention to it.' In each case here supposed there would have been a *direct* adjudication upon the very matter; and in each there would have been a claim of privilege; but the facts would have raised the preliminary question, whether privilege or not; into that inquiry Lord Kenyon would have felt himself bound to enter, and when he had satisfied himself that there was no such privilege the fact of jurisdiction would have become immaterial."

"So, in the most learned and able argument of Holroyd, in *Burdett vs. Abbott*, 14 East., 128, when he had put a case of the speaker issuing his warrant by the direction of the House, to put a man to death, Ld. Ellenborough interposed thus: 'The question in all cases would be whether the House of Commons were a court of competent jurisdiction for the purpose of issuing a warrant to do the act. You are putting an extravagant case. It is not pretended that the exercise of a general jurisdiction is any part of their privileges. Where that case occurs (which it never will) the question would be whether they had general jurisdiction to issue such an order; and no doubt the courts of justice would do their duty.' This case again supposes an adjudication; but can *language* be more clear to show the undoubting opinion of that great judge that it would have been still open to this court to inquire into the jurisdiction of the House. And can any one seriously believe that the fact of a previous declaration by the House that they had such jurisdiction would have been considered by him as a shutting up that inquiry?"

"Again, the same principle relieves me from all difficulty as to cases, where, at first sight, the question appears to arise directly, but where still the court of law would have to determine the case before it upon facts already directly adjudicated upon by the House. Such was the celebrated case of *Burdett v. Abbott*, 14 East., 1, in the decision of which I most heartily concur. There the action was *trespass quare clausam fregit* and an assault and false imprisonment; but the defence was a procedure in execution of a sentence of the House of Commons. If that sentence were pronounced by a competent court, it warranted all that was done. The only question that could be made upon any principle of law was the competency of the adjudicating court; and the competency of the House *to commit for a contempt* being not seriously doubted, there was a direct adjudication, into the propriety of which

this court would not inquire. It could not inquire into it *without trying over again what has already been decided in the House*, i. e., whether Sir Francis Burdett had been guilty of the contempt; *but this would have been contrary to the plainest principles of law.*"

In the case of the sheriff of Middlesex, Hillary term, 1840, 11th Adolphus & Ellis, 273, 39 C. L. R., 80, a motion was made in B. R. for a *habeas corpus* to the sergeant-at-arms of the House of Commons to bring up the bodies of Wm. Evans, esq., and John Wheelton, esq., with the day and cause of their being taken and detained, &c. The writ was issued, and the sergeant-at-arms returned that he took and still detains the said Wm. Evans and John Wheelton by virtue of the following warrant under the hand of the speaker of the House of Commons.—*Martis 21'o. die Januarii*, 1840.

"Whereas the House of Commons have this day *resolved* that Wm. Evans, esq., and John Wheelton, esq., sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this House, be committed to the custody of the sergeant-at-arms attending the House,

"These are therefore to require you to take into your custody the bodies of the said William Evans and John Wheelton, and them safely keep during the pleasure of this House; for which this shall be your sufficient warrant.

"Given under my hand, the 21st day of January, 1840.

CHARLES SHAW LEFEVRE,
Speaker.

"To the sergeant-at-arms attending the House of Commons."

The return being filed, the counsel for the prisoner contended that the return was bad on these grounds:

First. That there was in fact no legal cause for the commitment; *that the court may inquire into this* by the statute of 56 G. 3, c. 100, which enacts, "That where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit), a judge shall, on proper complaint, award a *habeas corpus*, and that in all cases provided for by the act, although the return to the *habeas corpus* be sufficient in law, it shall be lawful for the judge before whom it is returnable to examine into the truth of the facts therein set forth, *by affidavit or by affirmation*, &c., and to do therein as to justice shall appertain."

And the counsel for the prisoners contended that "if the court may inquire into the truth of the facts, it is shown here on affidavit that the sheriff is committed for having acted in the lawful execution of process, and that the proceeding of the House of Commons is in opposition to the judgment delivered in *Stockdale v. Hansard*, 9 Adolphus & Ellis, 1, 36 E. C. L. R., 13, which, until reversed on appeal, is the law of the land.

Secondly (in p. 84), the counsel of the prisoners contended that "the return is bad, *because it does not state the facts on which the contempt arises*;" and they said (p. 84) "there are only three precedents of Parliamentary commitments which have been supported where no grounds were set forth." "The first is in *Streater's Case*, 5 How. St. Tr., 365, which, from the absurdity of the reasons by which the commitment was upheld, can not be considered of any weight. The next occurs in the *Earl of Shaftsbury's Case*, 4 How. St. Tr., 1269, S. C. 1 Mod., 144, which

was decided in bad times, and is not a precedent by which any subsequent decision can be supported. The proceedings of the House of Lords against the earl were by the House itself declared unparliamentary, and ordered to be vacated in the journals, that they might never be drawn into precedent, 6 How. St. Tr., 1310." "The third instance, and the only one since the revolution, was in Alexander Murray's Case, 1 Wils., 299. There, indeed, two of the judges, one of whom relied on the case of Lord Shaftsbury, said that 'if the contempt had been specified, this court could not judge of it;' but the third, Foster, J., appears to have relied upon the circumstance of the contempt being committed in the face of the House; and the particular point now in question does not seem to have been taken at the bar. In more modern cases the grounds from which the contempt was deduced have always been stated. It was so in Brass Crosby's Case, 2 W. Bl., 754, S. C. 3 Wils., 188, though De Grey, Ch. J., said there, as appears from 3 Wils., 203, that a return stating the breach of privilege generally would be sufficient; but he seems to ground that opinion entirely on the Earl of Shaftsbury's Case. In *Rex v. Flower*, 8 T. R., 314, the warrant was special; so were those in Sir Francis Burdett's Case, 14 East., 1. Lord Ellenborough there intimated that a commitment stated to be for a contempt of either House, *generally*, would be sufficient; but the opinion is thrown out *obiter*, and he seems to consider Lord Shaftsbury's Case an authority for such a form. In the case of *Burdett v. Abbott*, 5 Dow., 165, 199, in the House of Lords, Lord Eldon put it to the judges 'whether, if the court of common pleas, having adjudged an act to be a contempt of court had committed for the contempt, under a warrant stating such adjudication generally, and the matter came before the King's bench on return to a habeas corpus, setting forth the warrant, that court would discharge because the particular facts and circumstances of the contempt were not set forth,' and the judges answered in the negative. But in the case supposed the common pleas would be a court of record, acting according to the known course of the common law; the House of Commons is not such a court, or so acting; and the common pleas, in the case supposed, would be punishing for a contempt of court. The House of Commons here professes only to commit for a contempt of the privileges of that House, without showing what are the privileges which are supposed to be infringed. If the House may declare its own privilege as the common-law courts declare that law, it should, at least when it punishes for a breach of privilege, point out the privilege violated, so that the law on that subject may be known in future." "In the judgment of Vaughan, Ch. J., in *Bushell's Case*, Vaughan, 135, 137, it is said, that the writ of habeas corpus commands the day and the cause of the caption and detaining of the prisoner to be certified upon the return, which if not done the court can not possibly judge whether the cause of the commitment and detainer be according to law or against it. Therefore the cause of the imprisonment ought, by the return, to appear as specifically and certainly to the judges of the return as it did to the court or person authorized to commit, else the return is insufficient. The House of Commons, then, like other jurisdictions that exercise the power of committing may be required, on habeas corpus, to show the particular grounds. And were it otherwise, the House of Parliament might, at any time, punish offences against the property or servants of individual members, under the name of contempts, as was done formerly. That the court would not now suffer this practice to pass unquestioned, though the contempt might be alleged generally on a return to a habeas corpus, appears from several passages in the judg-

ment of Lord Denman, Ch. J., in *Stockdale v. Hansard*, 9 Adolphus & Ellis, 116, 124, 147, 36 E. C. L. Rep., 31."

No one appeared in support of the return.

Ld. Denman, Ch. J., said: "I think it necessary to declare that the judgment delivered by this court last Trinity term in the case of *Stockdale v. Hansard*, 9 Adolphus & Ellis, 1, 36 E. C. L. Rep., 13, appears to me in all respects correct. The court decided there that there was no power in this country above being questioned by law." And (in p. 87) he said: "The only question, upon the present return, is whether the commitment is sustained by a legal warrant." After stating and overruling some minor objections, he says (in p. 87): "The great objection remains behind—that *the facts which constitute the alleged contempt are not shown by the warrant*. It may be admitted that words containing this kind of statement have appeared in most of the former cases; indeed, there are few in which they have not."

"In *Brass Crosby's* (2 W. Bl., 754, S. C. 3 Wils., 188), *Sir Francis Burdett's* (14 East., 1), and *Mr. Hobhouse's* (2 Chitty Rep., 207), cases, words were used showing the nature of the contempt. In the *Earl of Shaftesbury's Case* (6 How. St. Tr., 1269, S. C. 1 Mod., 144), the form was general; and it was held unnecessary to set out the facts upon which the contempt arose. That case is open to observation upon other grounds, but I think it has not been questioned upon this. In *Regina v. Paty*, 2 Lord Raym., 1105, three of the judges adopted the doctrine of that case to the extent of holding that the court could not inquire into the ground of the commitment, even when expressed in the warrant. Holt, Ch. J., differed from them on that point; but he did not question that where the warrant omitted to state facts, the cause could not be inquired into. In *Murray's Case*, 1, Wils., 299, which has been often referred to and recognized as an authority, the warrant was in a general form. There is, perhaps, no case in the books entitled to so great weight as *Burdett v. Abbott*, 14 East., 1, from the learning of the counsel who argued and the judges who decided it, the frequent discussions which the subject underwent, and the diligent endeavors made to obtain the fullest information upon it. The judgment of Ld. Ellenborough there, as it bears on the *point* now before us, is remarkable. He says: "If a commitment appeared to be for a contempt of the House of Commons *generally*, I would neither in the case of that court, or of any other of the superior courts, inquire further; but if it did not profess to commit for contempt, but for some matter appearing upon the return which could, by no reasonable intendment, be considered as a contempt to the court committing, but a ground of commitment palpably and evidently arbitrary, unjust and contrary to every principle of positive law, or natural justice, I say that in case of such a commitment (if it ever should occur, but which I can not possibly anticipate as ever likely to occur), we must look at it and act upon it as justice may require, from whatever court it may profess to have proceeded." Bayley, J., as well as Ld. Ellenborough, appears in that case to have been of opinion that if particular facts are stated in the warrant, and do not bear out the commitment, the court should act upon the principle recognized by Ld. Holt in *Regina v. Paty*; but that if the warrant merely state a contempt in general terms, the court is bound by it. That rule was adopted by this court in *Rex v. Hobhouse*, and in the late case of *Stockdale v. Hansard*, 9 A. & E., 1, 36 E. C. L. Rep., 13, there was not one of us who did not express himself conformably to it. In the passages which have been cited from my own judgment in that case, as showing that if a person were committed for a contempt in trespassing upon a member's

property, this court would notice the ground of committal, I always supposed that the insufficient ground should appear by the warrant.

“The Earl of Shaftesbury’s case has been dwelt upon in the argument as governing the decisions of the courts on all subsequent occasions, but I think not correctly. There is something in the nature of the Houses themselves which carries with it the authority that has been claimed, though in the discussion of such questions the last important decision is always referred to. Instances have been pointed out in which the Crown has exerted its prerogative in a manner now considered illegal, and the courts have acquiesced; but the cases are not analogous. The Crown has no rights which it can exercise otherwise than by process of law and through amenable officers; but representative bodies must necessarily vindicate their authority by means of their own; and those means lie in the process of committal for contempt. This applies not to the Houses of Parliament only, but, as we observed in *Burdett v. Abbott*, 14 East., 138, to the courts of justice which, as well as the Houses, must be liable to continual obstruction and insult if they were not intrusted with such powers. It is unnecessary to discuss the question whether each House of Parliament be or be not a court; it is clear they cannot exercise their proper functions without the power of protecting themselves against interference. The test of the authority of the House of Commons in this respect, submitted by Lord Eldon to the judges in *Burdett v. Abbott*, 5 Dow., 199, was, whether, if the court of common pleas had adjudged an act to be a contempt of court, and committed for it, stating the adjudication generally, the court of king’s bench on a habeas corpus setting forth the warrant would discharge the prisoner because the facts and circumstances of the contempt were not stated. A negative answer being given, Lord Eldon, with the concurrence of Lord Erskine (who had before been adverse to the exercise of jurisdiction), and without a dissenting voice from the House, affirmed the judgment below. And we must presume that what any court, much more what either House of Parliament, acting on great legal authority, takes upon it to pronounce a contempt, is so.”

“It was urged that this not being a criminal matter, the court was bound by the Stat., 56 G. 3, c. 100, to inquire into the case on affidavit. But I think the provision cited is not applicable. On the motion for a habeas corpus there must be an affidavit from the party applying; but the return, if it discloses a sufficient answer, puts an end to the case; and I think the production of a good warrant is a sufficient answer. Seeing that, we can not go into the question of contempt on affidavit nor discuss the motives which may be alleged.” “In the present case I am obliged to say that I find no authority under which we are entitled to discharge these gentlemen from their imprisonment.”

Littledale, J., concurred, and said: “If the warrant returned be good on the face of it, we can go no further. The principal objection is that it does not sufficiently express the cause of commitment; and instances have been cited in which the nature of the contempt was specified. But the doctrine laid down in *Burdett v. Abbott*, 14 East., 1, 5 Dow., 165, in this court, and before the House of Lords, sufficiently authorizes the present form. If the warrant declares the grounds of adjudication, this court, in many cases will examine into their validity, but if it does not, we can not go into such an inquiry. Here we must suppose that the House adjudicated with sufficient reasons, and they were the proper judges.”

Williams, J., said, in p. 90: “It was a startling admission in the argument which has been addressed to us, that for the last century and an

half there have been precedents in favor of this commitment. Recognized precedents have the force of decisions by which courts and judges individually must hold themselves bound. I do not think this court can suffer any loss of authority by so acting in the present case, but: whatever may be the consequences, we must overlook it when there is an ascertained rule of law before us. If the return, in a case like this, showed a frivolous cause of commitment, as for wearing a particular dress, I should agree in the opinion expressed by Ld. Ellenborough in *Burdett v. Abbott*, where he distinguishes between a commitment, stating a contempt generally, and one appearing by the return to be made on grounds palpably unjust and absurd." "Then the only point in this case is whether there can be on the warrant, an adjudication, in form, of commitment for contempt, which the court according to precedent is bound to recognize." "The only real question is whether we can interfere, because the ground of commitment is not particularly stated. On this point it is sufficient to cite the judgment of De Grey, Ch. J., in *Brass Crosby's Case*, which is referred to with approbation by Ld. Ellenborough in *Burdett v. Abbott*, 14 East., 1, 148."

Coleridge, J., in p. 91, says: "I come to my present conclusion with great regret when I consider the circumstances; but with confidence to its justice. As to the former case of *Stockdale v. Hansard*, 9 A. & E., 2, 36, E. C. L. Rep., 13, so far as regards the general positions there laid down, I most entirely agree in them and remain of the same opinion as when it was decided. I formed that opinion with great pains and labor and a candid attention to the arguments." "The material questions here are whether the return is not bad for not disclosing the particular grounds of the commitment; and whether it is open to an answer by affidavit; or if it be so, whether there is any case made by the affidavits. Now, first, it is too late to contend that the generality of statement in the warrant is any solid objection. It appears by precedents that the House of Commons have been long in the habit of shaping their warrants in that manner. Their right to adjudicate in this general form in cases of contempt is not founded on privilege, but rests upon the same grounds on which this court or the court of common pleas might commit for a contempt, without stating a cause in the commitment." It is contended that affidavits may be received to explain the facts returned. But the return states simply an adjudication of contempt. There is nothing in the affidavits referred to which controverts the fact of such an adjudication; and if the house had jurisdiction to make it, we can no more inquire by affidavit whether they came to a right conclusion in doing so than we could in a case of like adjudication by the court of common pleas. These gentlemen must therefore be remanded.

These cases and authorities, we think, show conclusively that the Senate of the United States has power to punish for contempts of its authority in cases of which it has jurisdiction; that every court, including the Senate and House of Representatives, is the sole judge of its own contempts, and that in case of the commitment for contempt in such a case no other court can have a right to inquire *directly* into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus, and that the warrant of commitment need not set forth the particular facts which constitute the alleged contempt.

There were many cases cited in the argument to show that when the question of privilege or contempt came incidentally before the court, the court could and must decide it; but those cases have no bearing upon this, which is a case of habeas corpus, where it is admitted on all

hands that the question of contempt is brought directly before the court.

But if, upon this point, it should be thought that the majority of the judges of this court have (as it is suggested) stated the principle too broadly in respect to the conclusive effect of a judgment of contempt, and if it should be deemed necessary that it should appear in the return of the habeas corpus that at the time of the supposed contempt the Senate were acting in a matter of which they had jurisdiction—we all think it *does* sufficiently appear in the return that the Senate were, at that time, engaged in a matter within their jurisdiction, to wit, an inquiry whether any person, and who, had violated the rule of the Senate which requires that all treaties laid before them should be kept secret until the Senate should take off the injunction of secrecy. This appears by the interrogatories propounded to the witness (the prisoner), as stated in the return, and by the recital, in part, of the answers of the witness to a part of those interrogatories.

But it has been contended also in argument that the power of the Senate to punish for contempts is confined to their authority over their own members.

It is true that by the Constitution, Art. I, sec. 5, "each House may determine the rules of its proceeding, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." But it says nothing of contempts. These were left to the operation of the common law principle that every court has a right to protect itself from insult and contempt, without which right of self-protection they could not discharge their high and important duties. It is not at all probable that the framers of the Constitution, by giving an express power to the Senate to punish its members for disorderly behavior, and even to expel a member, intended to deprive the Senate of that protection from insult, which they knew very well belonged to and was enjoyed by both Houses of Parliament and the legislatures of the former colonies and now States of this Union. The provision of the Constitution may have been intended to remove a doubt, whether a member of the Senate, appointed by and responsible to a State legislature, could be guilty of a contempt to a body of which he himself was a member; or it may have been intended to apply only to such disorderly behavior as did not amount to a contempt of the House; or to remove a doubt whether the Senate had power to expel a member. But whatever may have been the intention, we think the provision does not justify an inference that their power to punish for contempts can be executed only upon members of the Senate.

On this point, Mr. Justice Johnson, in delivering the opinion of the Supreme Court in the case of *Anderson v. Dunn*, 6 Wheaton, said (in p. 225): "It is certainly true that there is no power given by the Constitution to either House to punish for contempts, except when committed by their own members; nor does the judicial or criminal power given to the United States in any part extend to the infliction of punishment for contempt of either House, or any one coordinate branch of the Government. Shall we, therefore, decide that no such power exists? It is true that such a power, if it exists, must be derived by implication, and the genius and spirit of our institutions are hostile to the exercise of implied powers. Had the faculties of man been competent to the framing of a system of government which would have left nothing to implication, it can not be doubted that the effort would have been made by the framers of the Constitution. But what is the fact? There is not in the whole of that admirable instrument a grant of powers which

does not draw after it others not expressed, but vital to their exercise; not substantive and independent, but auxiliary and subordinate. The idea is utopian that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility and stated appeals to public approbation." And again (in p. 226), he says: "But if there is one maxim which necessarily rides over all others in the practical application of government, it is that the public functionaries must be left at liberty to exercise the powers which the people have entrusted to them. The interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation; nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers." "The unreasonable murmurs of individuals against the restraints of society have a direct tendency to produce that worst of all despotisms, which makes every individual the tyrant over his neighbor's rights. That the 'safety of the people is the supreme law,' not only comports with, but is indispensable to the exercise of those powers in their public functionaries, without which that safety can not be guarded. On this principle it is that courts of justice are universally acknowledged to be vested by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution." "It is true that the courts of justice of the United States are vested by express statute provision with power to fine and imprison for contempts; but it does not follow from this circumstance that they could not have exercised that power without the aid of the statute, or not in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution or a legislative declaration, that the power of punishing for contempt shall not extend beyond its known and acknowledged limits of fine and imprisonment."

Again the same judge (in page 228) says: "The alternative of denying this power leads to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may meditate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberative assembly, clothed with the majesty of the people and charged with a care of all that is dear to them, composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation, whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire—that such an assembly should not possess the power to suppress rudeness or repel insult is a supposition too wild to be suggested."

And again (at page 232): "But it is argued that the inference, if any, arising under the Constitution is against the exercise of the powers here asserted by the House of Representatives that the express grant of power to punish their members respectively and to expel them, by the application of a familiar maxim raises an implication against the power to punish any other than their own members. This argument proves too much, for its direct application would lead to the annihila-

tion of almost every power of Congress. To enforce its laws upon any subject without the sanction of punishment is obviously impossible. Yet there is an express grant of power to punish in one class of cases and one only, and all the punishing power exercised by Congress in any cases, except those which relate to piracy and offenses against the laws of nations, is derived from implication. Nor did the idea ever occur to anyone that the express grant in one class of cases repelled the assumption of the punishing power in any other."

"The truth is that the exercise of the powers given over their own members was of such a delicate nature that a constitutional provision became necessary to assert or communicate it. Constituted as that body is, of the delegates of confederated States, some such provision was necessary to guard against their mutual jealousy, since every proceeding against a representative would indirectly affect the honor or interests of the State which sent him." "In reply to the suggestion that on this same foundation of necessity might be raised a superstructure of implied powers in the executive and every other Department, and even ministerial officer of the Government, it would be sufficient to observe, that neither analogy nor precedent would support the assertion of such a power in any other than a legislative or judicial body."

It was also contended in argument that although the Senate might hold secret sessions, they could not, in secret session, punish a man for contempt. The court, however, can not perceive any reason why the Senate should not have the same power of punishing contempts in secret as in open session. In the early years of this Government the sessions of the Senate were always secret.

The Constitution of the United States, Article I, section 5, requires that "each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy." The journal can not be kept secret unless the proceedings themselves be kept secret. Hence, each House has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy. The necessity of the power to hold secret sessions, especially of the Senate, is so obvious that no argument in its favor is required by the court.

The Senate, besides being a branch of the Legislature, is the executive council of the President, and stands in intimate communion with him in regard to all our foreign diplomatic relations. Nothing, therefore, can be more proper than that all executive sessions of the Senate, and all confidential communications relating to treaties should be with closed doors and under the seal of secrecy. Hence the standing rule of the Senate (No. 38) requires that all confidential communications made by the President of the United States to the Senate shall be, by the members thereof, kept secret; and all treaties which may be laid before the Senate shall also be kept secret until the Senate shall, by their resolution, take off the injunction of secrecy. And by the standing rule of the Senate (No. 39), "All information or remarks touching or concerning the character and qualifications of any person nominated by the President to office shall be kept secret." By the fortieth rule of the Senate, "When acting on confidential or executive business, the Senate shall be cleared of all persons, except the Secretary, the principal or executive clerk, the Sergeant-at-Arms and Doorkeeper and assistant doorkeeper." By the forty-first rule of the Senate, "The legislative proceedings, the executive proceedings, and the confidential legislative proceedings of the Senate shall be kept in separate and distinct books."

These rules were established under the power given to the Senate by

the Constitution of the United States, Article I, section 5, "To determine the rules of its proceedings," and are, therefore, until repealed, as obligatory as if they had been inserted in the Constitution itself; so that it is not only the privilege, but the duty of the Senate to hold its executive sessions in secret. No odium, therefore, can attach to the Senate from the circumstance that the judgment for contempt was pronounced in secret session, upon a transaction which took place in secret session. It could not have been done otherwise. The offense must be punished in secret session or go unpunished; leaving the Senate exposed to all sorts of insults in the discharge of their solemn constitutional duties.

After an anxious and careful consideration of the whole case, the court is unanimously of opinion that the Senate of the United States has power, when acting in a case within its jurisdiction, to punish all contempts of its authority, and that the prisoner, having been committed by the Senate for such a contempt, and being still held and detained for that cause by their officer, this court has, upon the habeas corpus, no jurisdiction to inquire further into the cause of commitment and must remand the prisoner.

Prisoner remanded.

PROCEEDINGS IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

IN THE MATTER OF THE

*Application of the United States Pacific Railway Commission to compel
Leland Stanford to answer certain interrogatories to him propounded by
said Commission.*

[Petition.]

Circuit court of the United States for the northern district of California.
In the matter of the United States Pacific Railway Commission.

The petition of Robert E. Pattison, E. Ellery Anderson, and David T. Littler, Commissioners appointed under an act of Congress entitled "An act authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes," approved March 3, 1887, respectfully shows:

I.

That the Central Pacific Railroad Company of California was duly organized and incorporated under the laws of the State of California on or about the 27th day of June, 1861.

That on December 13, 1862, the Western Pacific Railroad Company was incorporated under an act of the legislature of the State of California.

That on the 22d day of August, 1870, the said Central Pacific Railroad Company of California, and the said Western Pacific Railroad Company, together with certain other railroad companies, were duly and legally consolidated, and that the companies so consolidated became, and thereafter were known as, the Central Pacific Railroad Company.

That on the 1st day of July, 1862, the Congress of the United States enacted a law entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes."

That by the ninth section of said act it was, among other things, provided that the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, was thereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco or the navigable waters of the Sacramento River, to the eastern boundary of California, upon the terms and conditions stated in the said act, and that thereafter authority was given to the said corporation to extend the line of its railroad to a junct.

tion with the Union Pacific Railroad Company, at or near Ogden, in the Territory of Utah.

II.

That under the provisions of the act of July 1, 1862, above referred to, and of another act of Congress passed July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," the said Central Pacific Railroad Company received aid from the Government of the United States in bonds, and that the terms and conditions upon which such aid was extended to the said company are set forth in detail in the said acts, to which acts reference is hereby made for greater certainty.

III.

That on the 7th day of October, 1832, the Central Pacific Railroad Company duly accepted the conditions of the said acts of Congress, and subsequently filed their acceptance thereof in the Department of the Interior, and that they thereby became subject to the jurisdiction of Congress and the laws of the United States; that all of the bonds provided by the said acts have been duly delivered by the United States to the said Central Pacific Railroad Company, and that the said company has received the entire benefit thereof; that all other privileges, advantages, and gifts of land by the said acts provided have also been received by the said company in so far as it has become entitled to receive the same.

IV.

Your petitioners further show that by the terms of the said act of Congress first above recited, approved March 3, 1887, it was provided that the President of the United States should appoint three Commissioners for the purposes of the said act; that the persons appointed on the said Commission should have power to examine all books, papers, and methods of the companies in the said act named, and that the said Commissioners were charged with the duty of examining into the working and financial management of all the railroads that have received aid from the Government in bonds, and also to inquire and report whether said companies, or either of them, or their officers or agents, have paid any money or other valuable consideration, or done any other act or thing for the purposes in the said act stated, to which for greater certainty reference is hereby made.

V.

Your petitioners further show that in the month of April, 1887, the President of the United States did appoint your petitioners Commissioners under the said act, and that said Commissioners have duly qualified, and are now engaged in discharging the duties imposed upon them by the said act.

VI.

Your petitioners further show that it was, by the last-mentioned act, further provided "that the Commissioners hereby created, or either of them, shall have power to require the attendance and testimony of witnesses, and the production of all books, contracts, agreements, and documents relating to the matter under investigation, and to administer oaths; and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the

production of books, papers, and documents under the provisions of this section;" and that "any of the circuit or district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring any such person to appear before said Commissioners, or either of them, as the case may be, and produce books and papers, if so ordered, and give evidence touching the matter in question."

VII.

Your petitioners further show that on the 10th day of August, 1887, a regular session of the Commission was held at the Palace Hotel, in the city of San Francisco, for the purpose of investigating the books, accounts, and methods, and other matters referred to said Commission by the said act, of the Central Pacific Railroad Company.

That Leland Stanford was and, from about the year 1863 to the present time, has been and still is the president of the said company; that as such president he has taken a large part in the management of the said corporation, has been active in all its business, and has been personally familiar with its financial affairs.

That on the said 10th day of August, 1887, the said Leland Stanford was present before the said Commission as a witness duly sworn; that in the course of the examination of the said Stanford a number of vouchers purporting to represent the expenditures of moneys belonging to the said corporation, which vouchers had been produced by the company and were duly authenticated, were produced and verified; that a copy of all the said vouchers is hereto annexed, marked "Schedule A," which schedule is made a part of this petition.

That it appears from said vouchers that between the 9th day of November, in the year 1870, and the 21st day of December, in the year 1880, various large sums of money, amounting in the aggregate to the sum of \$733,725.68, had been expended by the said Leland Stanford, and had been by him charged to the said company, and by the acts of the said company had been re-imbursed to the said Leland Stanford.

That the persons to whom the said moneys had been paid and the objects to which the same had been applied do not appear upon the face of the said vouchers, except that the said objects are stated in general terms to have been for general expense account for legal services, and also except that in a few instances the initials of persons to whom the moneys purport to have been paid are given.

Your petitioners further show that in the course of the said examination, voucher No. 2569 $\frac{1}{2}$, being one of the vouchers hereto annexed, was shown to the witness and the following interrogatory was thereupon propounded to him:

"Q. Was any part of the \$171,000, the sum named in this bill that I handed to you (and that you now have), paid for the purpose of influencing legislation?"

The witness thereupon declined to answer the said interrogatory.

That in the course of the examination of the said Stanford it appeared that the amount contained in the said voucher was ascertained by one William E. Brown, under the directions of the said Leland Stanford, and that the result was arrived at by examining the individual checks of the said Stanford and selecting therefrom those which the said Stanford desired to charge to the said Central Pacific Railroad Company, and containing the aggregate of the said checks.

That it further appeared that the said Stanford had destroyed the said checks and the stub-books from which the same were taken, and

the pass-books relating to the bank account on which the said checks had been drawn.

That it also appeared from the evidence of the said Leland Stanford that in the month of December, 1875, the legislature of California was in session at the city of Sacramento; that it was the custom and practice of the said Stanford to attend at the sessions of the legislature for the purpose of protecting the interests of the Central Pacific Railroad Company, and that on such occasions he was accompanied by one or more attorneys or agents, for the purpose of assisting him before the legislature.

That the following interrogatory was propounded to the said witness:

"Q. Please name the lawyers who were in the habit of attending the legislature with you?"

That the witness thereupon declined to answer the said interrogatory.

That thereupon all of the said vouchers following voucher No. 2569 $\frac{1}{2}$ were in succession presented to the witness and he was asked whether any part of the moneys described in the said vouchers was expended through any agent or individual for the purpose of influencing legislation, and that the said Stanford, as to each of the said vouchers, declined to answer the said interrogatory.

That subsequently the following interrogatory was propounded to the said Stanford in relation to the said vouchers:

"Q. Did you ever give any portion of the moneys covered by these vouchers to Mr. S. T. Gage for the purpose of using the same in connection with measures pending in the legislature?"

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. Did you ever give any money that was thus expended without requiring any detailed account of the manner in which the same should be expended, to Mr. S. T. Gage?"

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. Did you ever pay any money to W. B. Carr for the purpose of being used with reference to legislative matters pending in the California legislature?"

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. I ask you the same question with regard to W. W. Stow."

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. I ask you the same question as to R. B. Mitchell."

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. I ask you the same question as to W. M. Stewart?"

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. The same question as to S. W. Kellogg?"

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. I ask you the same question as to Lyman Trumbull?"

That the witness declined to answer the said interrogatory.

That thereupon the following interrogatory was propounded to the said witness:

"Q. I ask you the same question as to John P. Jones?"

That the witness declined to answer the said interrogatory.

VIII.

That a copy of the evidence of the said Leland Stanford relating to the matters above referred to and containing his refusals to answer the several interrogatories above stated is hereunto annexed, marked "Schedule B," and is made a part of this petition.

Your petitioners further show that they are informed and believe that the matters sought to be disclosed by the interrogatories addressed to the said Leland Stanford relate to the subject-matter of their inquiry, and that in order to enable them to properly discharge the duties imposed upon them by the said acts of Congress the witness should be required to answer the same.

Therefore these petitioners pray this honorable court to issue an order requiring the said Leland Stanford to show cause, at a time and place to be specified in the said order, why he should not be required to appear before the said Commissioners and answer the said interrogatories.

ROBT. E. PATTISON.
E. ELLERY ANDERSON.
D. T. LITTLER.

CITY AND COUNTY OF SAN FRANCISCO, ss:

Robert E. Pattison, E. Ellery Anderson, and David T. Littler, being duly sworn, each for himself says that he has read the foregoing petition and knows the contents therein stated to be true, except as to matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

ROBT. E. PATTISON.
E. ELLERY ANDERSON.
D. T. LITTLER.

Sworn to before me this 13th day of August, 1887.

[SEAL.]

HOLLAND SMITH,
Notary Public.

SCHEDULE A, annexed to the petition, consists of the following vouchers, which will be found set forth in full in volume 6, at the pages indicated below:

Voucher number.	Page.	Amount.	Voucher number.	Page.	Amount.
2569½	3160	\$171,781.89	2549	3173	52,500.00
2571½	3177	8,911.53	2176½	3173	83,418.09
1877	3179	50,000.00	865½	3174	91,276.69
278½	3179	20,000.00	1064	3175	4,000.00
2568½	3178	8,773.05	1619	3176	12,000.00
2265	3176	1,560.00	1878	3181	29,974.13
1308	3184	500.00	1052	3182	13,000.00
1746	3183	38,156.03	307	3182	10,000.00
2094	3182	46,816.94	2567½	3177	15,117.33
1782½	3171	50,000.00			

SCHEDULE B, annexed to the petition, consists of the record of all proceedings before the Commission at the afternoon session of Wednesday, August 10, 1887, to be found in volume 6, pages 3160 to 3200.

ANSWER OF LELAND STANFORD.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

IN THE MATTER OF THE

United States Pacific Railway Commission.

To the honorable the Justices of said Circuit Court :

Leland Stanford, named in the petition filed in this honorable court in the above-entitled matter named, comes and makes answer to said petition in the manner following, that is to say :

The Central Pacific Railroad Company was duly incorporated under the laws of the State of California, on or about the 27th of June, 1861, since when it has continued to be and still is a corporation duly organized and acting under the laws of the State of California. In 1870 the Central Pacific Railroad Company of California consolidated with the Western Pacific Railroad Company, and thereafter became and still is known as the Central Pacific Railroad Company.

On the 1st of July, 1862, the Congress of the United States passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes."

On October 7, 1862, the company accepted the conditions of this act in conformity with its requirements.

On July 2, 1864, Congress passed an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' " approved July 1, 1862. Of the provisions of these acts of Congress the company availed itself, and has received the bonds provided for in said acts, and in part received the other subsidies therein provided for. With the aid thus furnished and the aid furnished by various subsidies under the laws of the State of California and the means and resources of the promoters and stockholders of that company, it constructed the Central Pacific Railroad from the city of Sacramento, in the State of California, to Promontory Point, in the Territory of Utah—the Central Pacific Railroad Company constructing the road from Sacramento to Promontory Point, and the Western Pacific Railroad Company constructing that extending from Sacramento to the City of San José. Since its organization I have been and still am president of the Central Pacific Railroad Company. As such I have taken a very active part in the construction of its road and the management of its affairs, and in the earlier road and the management of its affairs; and in the earlier part of the history of the company I was its financial agent and representative upon this coast.

During the course of the construction of its road the company was compelled to borrow money largely, and incur large expenditures of an extremely varied and general character.

In its incipency the enterprise was regarded as of doubtful success. The project was considered as visionary; its practicability was questioned; the liability, under the laws of this State, of the stockholders for their proportion of the debts and liabilities of the company contracted or incurred while stockholders, created distrust and deterred the public from taking an interest in the enterprise or extending it financial aid. These causes rendered the company, as such, unable in its corporate capacity to borrow money or secure the necessary funds with which to carry forward the construction of its road. Time was material, delay was disastrous. Public and private interests alike imperiously demanded a speedy completion of the road. Under the circumstances no alternative remained to myself and associates but upon our individual responsibility, as best as we might, to raise the necessary funds to enable the company to prosecute the work of construction of the road. Upon its success we staked our fortunes, assumed the responsibilities, and borrowed upon our individual credit these necessary funds.

At that time its office and principal place of business under its original articles of incorporation was in the city of Sacramento, while in those days, as at present, the city of San Francisco was the principal money center of the Pacific Coast, and the place where I was compelled to transact most of the business on behalf of the company in the way of raising and disbursing moneys on its account. In so doing I was practically compelled to pursue the course described in my evidence, a copy of which is annexed to the present application, in transacting the business of the company, and from time to time I made up my accounts and furnished vouchers to it as therein described.

In this way I have taken part in transacting the business of the company for a period extending over twenty-five years, and in point of value aggregating upwards of four hundred millions of dollars. As the business took place I was cognizant of it, but, owing to its multiplicity and the pressure of matters more important than mere detail, as well as the lapse of time, I am now no longer able to recall many of the matters with which I was once personally so familiar.

In May, 1887, shortly after the organization of the Commission, I received a circular from the Commissioners, calling upon me for information touching the matter specified in the act of Congress creating it.

This embraced all the matters contemplated and provided for in the act. How extensive and detailed is the information thus asked for an inspection of the act of Congress alone can tell. Comprehensive and sweeping as are its requirements, immediately upon the receipt of the circular I in good faith diligently endeavored to comply with them. Agreeable to the request thus made, I gave the necessary instructions to the officers and employes of the company to secure all available information thus called for, and called to my assistance all the aid at my command to fully, completely, and categorically answer the various interrogatories propounded to me. These answers I have submitted to the Commission. Some time after the receipt of this circular I was also favored with the presence of accountants and experts of the Commission, at whose request they called upon me for the purpose of investigating the books of the company and its affairs.

I promptly placed at their command all the books and all information at my disposal. Since then these gentlemen, with the assistance of the various officers and employes of the company, have been diligently en-

gaged in collecting all the data and information they desired in respect to the subject of the circular. Since the arrival of the Commission in San Francisco I have waited upon them; the principal officers and employés of the Central Pacific Railroad Company have waited upon them; and every person in the employ of the company whose presence was desired, or who could furnish them information in respect to the subjects of their investigation, have promptly and cheerfully done so.

In the original act of July 1, 1862, section 20, it was provided—

That the corporation hereby created and the roads connected therewith under the provisions of this act shall make to the Secretary of the Treasury an annual report, wherein shall be set forth, first, the names of the stockholders and their places of residence, so far as the same can be ascertained; second, the names and residence of the directors, and all other officers of the company; third, the amount of stock, and the amount thereof actually paid in; fourth, a description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys; fifth, the amount received from passengers upon the road; sixth, the amount received from freight thereon; seventh, a statement of the expense of said road and its fixtures; eighth, a statement of the indebtedness of said company, setting forth the various kinds therefor; which report shall be sworn to by the president of the said company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year.

The requirements of this provision of the law have been fully complied with from the time of its enactment, thus early bringing to the attention of the Government in the mode prescribed knowledge of all matters thus referred to.

Compliance with the provisions of this section of the statute compelling the company, in 1863, to report to the Government the names of the stockholders, their place of residence, the names of its directors and of all its other officers, the amount of its stock subscribed, of the amount actually paid in, a description of the line of its road surveyed, as well as of the lines fixed for its construction, of the cost of such surveys, the amount received from passengers and freight, a statement of the expense of the road, its fixtures, and a statement of the indebtedness of the company, setting forth the various kinds thereof. Coeval, therefore, with the creation with its indebtedness, the company was required to furnish the Government with a statement of it; and coeval with the time of the requirement did the company furnish such statement and, I believe, has ever since continued to do so.

As repeatedly declared by the highest court in the land, the relations created by the act of Congress between this company and the Government was that of a debtor and creditor. And the sole and only power to modify or change the relation thus created is expressed in the provisions of section 18, declaring that—

Whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for the services rendered for the United States, after deducting all expenditures, including the repairs and furnishing and running and managing the said road, shall exceed ten per cent. upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fares thereon, and, if unreasonable in amount, may fix and establish the same by law. And to better accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keep the same in working order, to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, *having due regard to the rights of said companies* namely herein, add to, alter, amend, or repeal this act.

The repeal of this act of Congress would not do away with the Central Pacific Railroad Company. Its existence does not depend upon the act of Congress. It owes its existence to the laws of the State of California and to those laws alone. While to the provisions of the act of

Congress are due the bounties therein provided for, the company does not owe its existence to that act, but to the laws of the State of California. However the repeal of the act of Congress may affect these bounties, it can in no wise affect the existence of this company.

It will moreover be observed that this reserved power is qualified with the attendant obligation on the part of the Government to only exercise it "having due regard for the rights of said companies." In the exercise of this reserved power, on the 19th of June, 1878, Congress passed an act to create an Auditor of Railroad Accounts, and for other purposes (Statutes of 1878-'79, page 169). The designation of this office was changed by the act of March 3, 1881, to "United States Commissioner of Railroads." The change has only been in title; the power and duties of the office remain the same. The first Auditor of Railroad Accounts appointed under the act of 1878 visited the office of the Central Pacific Railroad Company, in San Francisco, in 1879, and made a thorough examination of the accounts, books, and vouchers of the company from the date of its organization down to the date of his examination. He was given every facility for his examination.

Upon his report the account between the company and the Government was then settled and adjusted. Like examinations have actually been made, and the accounts between the Government and the company adjusted accordingly, the last one being on December 31, 1886. In these various ways was the Government kept fully informed, in the mode prescribed by Congress, of the condition of the affairs of the company as they stood up to the 31st of December, 1886. The affairs of the company, running from the 1st day of July, 1862, to the 31st of December, 1886, were thus annually made public to the country before the road of the Central Pacific Railroad Company had assumed any tangible shape. Its condition was reported to the United States Secretary of the Treasury. To him was annually reported the amount received from passengers and freight over the road. To him was reported "a statement of the indebtedness of the company, setting forth the *various kind thereof*." As the road was constructed and the indebtedness therefor created, it had to be reported to the Secretary of the Treasury, and it was so reported annually. Congress and the country were thus annually advised of the progress of the enterprise and of the mode and manner in which it was conducted. The work was not done in secret; its magnitude forbade; the interests of the parties forbade; the interests of the public forbade. The solemn declaration of Congress that "*the better to accomplish the object of this act, namely, to promote public interest and welfare by the construction of said railroad and telegraph line, and the keeping the same in order*," fully attest the character of the enterprise, and at once demonstrate how futile have been the efforts to conceal or disguise aught concerning the mode or manner in which it was carried forward. The mode and manner in which it was carried on was not disguised from the public; but the public in this State, and the public throughout the United States, at the time *well knew how the work was carried on*.

The embarrassments and the difficulties attendant upon the construction of the road deterred capital and banished all grounds for cupidity. While risks had to be incurred, liabilities assumed, the prospective profit and success were contingent and doubtful, and few were hardy enough to embark in the enterprise. While myself and my associates did not at the time hesitate to take the risk and stake our fortunes on the success or failure of the enterprise, and while we do not feel that we are on that account alone entitled to justly complain of any fair and candid or even

critical examination of the mode and manner in which the affairs of the company have been carried on and the interests of the public been treated, yet we feel that where we have complied with all of the requirements of the law, where we have annually reported to the United States Secretary of the Treasury, as required under the act of 1862, where we have submitted the affairs of the company to the investigation of all the officials charged with the investigation of the same, and where we have complied with every requirement of the law, oppressively as it has sometimes borne upon the company, and where the properly-authorized officers of the Government have accepted and received the reports of the company, fully showing the condition of its affairs as required by law, up to the 31st of December, 1886, it is hardly in keeping with the solemn compact made between the company and Congress, under the act of July, 1862, that no addition to, alteration in, or amendment to that act should be made without *having due regard for the rights of the company*, on the 3d of March, 1887, to pass the act of Congress authorizing the present investigation, under which we are called upon to go over now and investigate transactions reported to the Government over a quarter of a century ago, and long since settled and closed.

It may be true that there is no statute of limitations to run against the Government of the United States in any suit or proceeding at law or in equity; but assuredly where parties have carried on their dealings agreeably to the provisions of the several acts of Congress for over twenty-five years, openly and publicly, under the official responsibility, and subject to the scrutiny of the public press, it is not too much to ask that after such lapse of time some clear, imperious public necessity shall demand a disregard of all the principles and rules governing men in the ordinary business relations of life, and require the existence of some overruling necessity to call upon and justify the overhauling of all such dealings. Clearly this can not be the "due regard for the rights of the company" referred to in the act of 1862.

"With due regard for the rights of the company" such investigation cannot be had. "With due regard for the rights of the company" its duties, alike to the Government and its stockholders, cannot be disregarded. "With due regard for the rights of the company" its confidential relations and private business affairs cannot be made the subject of public investigation.

Notwithstanding having in these various modes, from the time of the passage of the original act of July 1, 1862, down to December 31, 1886, placed the Government in full possession of the true condition of the affairs of the company, yet upon the arrival of the Commission in this city, as already stated, and the various officers of the company have promptly and cheerfully afforded to the Commission every facility for a full, complete, and most thorough investigation of all matters the examination of which the Commission could properly be chargeable with. This examination has not only extended to the affairs of the Central Pacific Railroad Company, but it has extended to a searching investigation of the affairs of all the consolidated and allied companies connected with that corporation. Their affairs have been examined into, not only by the experts of the Commission, but the Commissioners themselves, and all their business relations have been exposed to the public and the prying curiosity of rival business competitors. Despite all the information thus promptly and cheerfully extended to the Commission it insists upon an investigation of matters with which the Government has and can have no possible concern. The Government, as already

stated, is but a creditor of the company. Its interest is in its per centum of the net earnings of the company. What disposition may have been made of its assets in the past, or what disposition may have been made of such portion of its assets or earnings as the Government has not and never had any interest in, is a matter with which the Government can have no possible concern.

In the answer submitted to the Commission on behalf of the company I have already stated, and now state, that in determining the amount of the net earnings of the company for the purpose of ascertaining what would be coming to the Government, amounts in respect to which satisfactory and detailed vouchers are not furnished shall be regarded as if the money represented by such vouchers were on hand, and the account with the Government settled as if such moneys remained unexpended. And I here make the same statement, in view of which I am wholly unable to discover how the Government can be concerned in any of the other earnings or funds of the company, or to which it has not and can have no possible legal or equitable claim. As to all moneys and funds of the company upon which the Government has not and can have no legal or equitable claim it occupies the position and stands clothed with all the legal rights and powers of any other debtor in the management, conduct, and disposition of this property, and is entitled to the like protection under the law.

It is in regard to this class of property the Commission insists upon answers to questions insistence upon which can have no possible effect upon any of the just relations between this company and the Government, and can only tend to cast doubt and suspicion upon parties whose names may be mentioned in the course of such investigation. As the subjects in respect to which these questions are propounded are of an exclusive private character and in no ways affecting the interests of the Government, neither the company nor its officers feel called upon to answer them.

To this course I feel the more constrained as the gentlemen of the Commission have distinctly and repeatedly avowed in the course of their examination that they did not regard themselves bound in such examination by the ordinary rules of evidence; that they would receive hearsay and ex parte statements, surmises, suspicions, and all character of information that might be called to their attention. And during the course of my examination before the Commission it has more than once transpired that I was examined upon charges made in pleadings and proceedings instituted against the company based upon suspicion and surmise, and in many cases without actual foundation. Questions have been propounded, and a line of examination pursued, manifestly prompted by disaffected and hostile parties, whose aim was more the pursuit of personal enmity of a private character than the interests of the public at large or the ends of justice. To answer any of the objectionable questions propounded necessarily gives rise to the implication that all persons whose names may be mentioned in the questions to which answers are declined are guilty of the acts, commission of which is implied in the bare asking of the question.

In my testimony given to the Commissioners I have said in substance, and now repeat, that I have never corrupted or attempted to corrupt any member of the legislature, or any member of Congress, or any public official, nor have I authorized any agent to do so.

In regard to the vouchers referred to on the present application, I have already submitted my explanation to the Commission, and I have already stated to them, as I have hereinbefore stated, that they shall

not be allowed in any wise to injuriously affect the interests of the Government. Yet I do not in this connection deem it proper to admit the implication of the Commission of any thing improper upon my part, because of the form or character of the vouchers, or the failure to explain the same. All the claims covered by those vouchers have received not only the approval of the board of directors of the Central Pacific Railroad Company, but likewise the approval of the stockholders of the company. All parties who could in any wise legally or equitably be affected by the disbursements embraced in those vouchers were fully satisfied therewith, and have ratified and approved of the same. In addition to which I may be permitted to say that in the conduct and management of a business of the magnitude of that of the Central Pacific Railroad Company, and the various corporations consolidated and allied therewith, it is impossible not from time to time to have to do business involving disbursements which every dictate of business prudence will not admit of being made public. Arrangements of a private character, names of parties not publicly known, and the disclosure of which could only result in defeating the ends in view and exposing the persons so named to suspicion or obloquy, would forbid making the same public either upon the archives of the company or before a public commission. We find this course of policy not only sanctioned by ordinary experience in business life, but we find that the Government of these United States and the government of the State of California, as well as the government of the city and county of San Francisco, severally allow to their chief magistrates moneys the investment of which is committed exclusively to their judgment and discretion, and for which detailed vouchers are never required.

I regret that the Commission have deemed it their duty to propound questions involving criminality on my part and on the part of the persons whose names have been mentioned by the Commission in such questions, answers to which for the reasons already stated I have felt constrained to decline to make.

I had supposed that every American citizen was protected by law from such questions. Be that as it may, acting not merely on my own behalf, but in behalf of those whose interests as stockholders of the Central Pacific Railroad are committed to my charge, I feel bound to decline to answer them unless the court shall otherwise direct. All citizens of these United States are entitled to the equal protection of the laws, and no person can be deprived of life, liberty, and property without due process of law.

I feel that I am entitled not only personally to the benefit of these constitutional guarantees, but that all my fellow citizens whose interests I, through this company, represent are likewise entitled to their benefit. I do not feel personally at liberty to decline to assure to them and to their interests committed to my charge the benefit of the protection secured to them by these great fundamental principles of our Constitution and laws, and, therefore, I respectfully submit that under their protection I am not required to answer the questions propounded, nor should the court make the order prayed for in the petition herein.

McALLISTER & BERGIN,
Attorneys for Respondent.

STATE OF CALIFORNIA,

City and County of San Francisco, ss :

Leland Stanford, having been duly sworn, says that he is the person named in the foregoing answer in the above-entitled matter; that he

has heard read the foregoing answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

LELAND STANFORD.

Subscribed and sworn to before me this 16th day of August, A. D. 1887.

[NOTARIAL SEAL.]

HOLLAND SMITH,
Notary Public.

Indorsed: Service of within answer and receipt of a copy thereof admitted this 16th day of August, A. D. 1887.

John T. Carey, United States attorney. Filed August 16, 1887.
L. S. B. Sawyer, clerk.

BRIEF FOR THE U. S. PACIFIC RAILWAY COMMISSION.

NO.—. IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

IN THE MATTER OF THE

*United States Pacific Railway Commission's application to compel Leland
Stanford to answer.*

Points and authorities. John T. Carey, United States attorney, and
Henry C. McPike, assistant United States attorney, counsel for
petitioners.

STATEMENT OF FACTS.

The petitioners are the Commissioners appointed under an act of Congress passed March 3, 1887, authorizing the investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes.

The Central Pacific Railroad is a corporation included with those designated by the act.

The Commissioners, in the discharge of the duties imposed by the act, have been for some time past engaged at the city of San Francisco in examining the officers of the company and its books and accounts. During the examination of Leland Stanford, who since 1863 has been the president of the road, a number of vouchers were produced bearing his signature and containing no other designation of the purposes to which the moneys covered by the vouchers had been applied than the statement that they were for "expense accounts" or "legal expense accounts."

The act, among other things, directs the Commissioners to inquire "what amounts of money or other valuable consideration, such as stocks, bonds, passes, etc., have been expended or paid out by said companies, whether for lawful or unlawful purpose, and for which sufficient and detailed vouchers have not been given," and further, "to inquire and report whether said companies, or either of them, or their officers or agents, have paid any money or other valuable consideration or done any other act or thing for the purpose of influencing legislation."

In pursuance of this direction contained in the act, the Commissioners addressed to the said Leland Stanford the following question:

Q. "Was any part of the \$171,000, the sum named in this bill that I handed to you (and that you now have), paid for the purpose of influencing legislation?"

The witness declined to answer the question, not, however, alleging as a reason for such refusal that the answer might tend to criminate

him, but asserting that the question was one to which the Commission had no legal right to demand an answer. The question was repeated as to various vouchers, and in different forms, for the purpose of avoiding any question as to its being sufficiently specific; but as the company's counsel have expressly declared that they did not desire the court to pass on any mere question of form or regularity, we shall assume that the question above quoted presents the whole matter to the court on its merits.

The question thus presented, while of the utmost gravity and importance, is entirely free from any complications or uncertainty as to the facts involved. The petitioners respectfully insist that they were entitled to an answer to the question above propounded. Their right to an answer depends on the two following propositions:

I.

That Congress had the power to direct the investigation, and to direct it in a manner set forth in the act.

II.

That the question above propounded relates to the subject of the investigation.

POINT 1.—*Congress had the power to investigate "books, accounts, and methods of railroads which have received aid from the United States."*

In this connection it will be observed that the act of March 3, 1887, is not applied to any corporation by name, but extends to all corporations which have received aid from the United States. It can not, therefore, be claimed that its provisions are directed against any particular corporation.

The proposition stated in this point, in our judgment, will be conceded by every one, including the counsel for the Central Pacific Railroad. Its application to the case under consideration has been disguised and obscured by reference to matters which really have no connection with the question. It is alleged and urged that when the United States lent its credit to the Central Pacific Railroad it abdicated its sovereignty and stepped down into the ranks of its own subjects by creating between it and the corporation above named the relation of debtor and creditor. That as creditor it has no right to demand that what are claimed to be equivalent to proceedings supplementary to execution shall be exercised on its behalf, not only before judgment but before the maturity of its claim. This argument simply tenders a false issue to the court. The objects intended to be attained by the act have no relation to the enforcement of the debt due to the United States, and the investigations directed are not in the nature of proceedings for a recovery of the claim or a discovery of assets.

The attempt, therefore, to apply the doctrine of the Supreme Court of the United States as laid down in the *United States against the Union Pacific Railway Company* (98 U. S., 569), can not be successfully maintained. That suit was brought under an act of Congress passed March 3, 1873, directing the Attorney-General to cause a suit in equity to be instituted in the name of the United States against the Union Pacific Railroad Company and against a number of persons described in the act who were alleged to be wrongfully in possession of property of the said company either by reason of unpaid subscriptions for the stock or by

reason of the receipt of moneys of the company to which they were not entitled, for the purpose of compelling the payment for such stock and the collection and payment of such moneys, and the restitution of such property or its value either to the said railroad company or to the United States, whichever shall in equity be held entitled thereto. (See case above cited, p. 571.)

It will be readily perceived that the sole object of this suit was to enforce by peculiar remedies the alleged rights of the United States as creditor against the defendants as debtors or against persons who could be properly held accountable in that suit for property or money; and the decision of the court is placed entirely on this ground. The United States is treated as an ordinary creditor, whose debt is not due and who seeks by extraordinary proceedings in equity to sequester the assets and chases in action of its debtor. The court, however, expressly recognized the existence of the relation of sovereign and subject between the United States and the company, and declared that those relations were in nowise affected or impaired by the existence of the relation of creditor and debtor. At page 616 the court says:

In its sovereign or legislative relation to the company the United States has powers, the extent of which it is unnecessary to define in this case. The two sections of the act, under one of which this suit was instituted, are instances of an exercise of these powers and they affect the interest of the company in important particulars. Congress might have also directed the Attorney-General, either as part of these proceedings or as an independent one, to ask the court to declare the franchise of the company forfeited. It might have ordered a bill to inquire if the company is involved, and if so, wind up its affairs and distribute its assets. In short, there are many modes in which the legislature could have called into operation all the judicial powers known to the law.

This same distinction is still more emphatically recognized in the Sinking Fund Case (99 U. S., p. 710), the clearest statement of this dual relation being found in the dissenting opinion of Mr. Justice Field at page 751:

The relation of the General Government to the Pacific companies is twofold: That of sovereign in its own territory and that of contractor. As sovereign its power extends to the enforcement of such acts and regulations by the companies as will insure to the management of their roads and conduct of their officers in its territory, the safety, convenience, and comfort of the public.

In the same case, at page 720, Chief-Justice Waite, after having explained the existence of the reserved right of amendment, cites with approbation the law as laid down by Mr. Justice Clifford in *Miller v. The State* (15 Wall., p. 498):

It may safely be affirmed that the reserved power may be exercised and to almost any extent to carry into effect the original purposes of the grant or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper distribution of its assets.

The same justice again cites that proposition from *Holyoke Company v. Lyman*, 15 Wallace, 519; the declaration that the same right of amendment may be exercised "to protect the rights of the public and of the corporators or to promote the due administration of the affairs of the corporation." He also cites with approbation the declaration of Mr. Justice Field in *Tomlinson v. Jessop*, 15 Wallace, 459, that "the reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State."

A vast proportion of the affairs of modern society are carried on through the instrumentalities of corporations. As common carriers they move substantially all the passengers and freight which the re-

quirements of commerce demand. The highways, railways, canals, and water-ways are all substantially operated and controlled by these great corporations. A very large proportion of the manufacturing industries and a proportion of our agricultural enterprises are carried on in the same way. These corporate powers, judiciously exercised, have been among the most powerful agents for the great development of modern civilization, and have largely promoted the wealth, welfare, and comfort of all classes of our society. But they have also proved to be, in the hands of the unscrupulous, powerful engines of oppression and instruments by which the cupidity and the avarice of men have been enabled to gratify unlawful ends. The accumulation of power and wealth in corporations, unless firmly controlled and regulated by efficient and constant supervision, is a menace to the liberties of the people. It seems, therefore, impossible to deny the proposition that all legislatures through whose actions these corporations have been called into being shall have the absolute and unlimited right to control them, and to regulate them, and, when they deem it necessary, to investigate their methods, the management of their affairs, their books and accounts, and to examine their officers.

We submit that a close examination of the act under which these Commissioners have been appointed will satisfy the court that it is not intended under that act to institute any proceedings for the purpose of protecting or advancing the interests of the United States as a creditor. *No power whatever is given to the Commissioners to judicially determine as between the United States and the companies any question or right whatever. They cannot determine or adjudge the amount due to the United States from either of the companies referred to in the act. The Commissioners are required to inform themselves as to a vast variety of matters of fact, and are directed to report their conclusions to the President, and through him to Congress. The general purpose of their report is to enable Congress to ascertain "whether the interests of the United States require any extension of time for performance of the obligation to the United States of said companies, or any of them," and the Commissioners are also directed "to submit a scheme for such extension which shall secure to the United States full payment of all debts due them from said companies, with a reasonable rate of interest, in such time as the Commissioners shall propose, having due regard to the financial ability of said companies, and the proper conduct of their business, in such a manner as shall afford efficient service to the public."

We challenge the counsel for the company to cite from the act a single sentence or word which looks to any proceedings whatever which can in any way judicially determine any obligation of these companies, any right of the United States, or in any manner, however remote, affect their relations to each other as debtor and creditor. It is impossible, on the other hand, to read the act carefully without being convinced that the object of Congress was to obtain through this Commission such information as it was entitled in the exercise of its sovereign powers to receive from corporations which it had aided by its grant of powers and franchises, by the loan of its credit, and by its munificent donation of public lands.

POINT 2.—*The method of conducting the investigation as provided in the act is entirely within the scope of the powers of Congress.*

The act provides that the President of the United States shall appoint three Commissioners, and to these Commissioners power was given to conduct the investigation. No serious question is made as to the right

of Congress to adopt this method of obtaining needed information. It could hardly be obtained through the intervention of any committee of Congress. The information called for by the act is so varied and so extensive that it will evidently require the constant and uninterrupted attention of the persons to whom these duties were confided for the entire period allowed by the act itself. Moreover, this method of informing Congress has been so constantly pursued, both by the national and the several State legislatures on so many occasions and for such a variety of purposes, that we shall assume its propriety to be conceded.

POINT 3. *The jurisdiction of Congress as to the Central Pacific Railroads is as complete and extensive as it is over all other roads aided by the United States.*

This point was expressly decided in the Sinking-Fund Case (99 U. S., p. 710). An attempt was made in that case to distinguish between the Central Pacific Railroad Company and the Union Pacific Railroad Company as to the applicability of the Thurman act; but the court held that the Central Pacific Railroad Company, after having accepted all the conditions that were attached to the grants, including the reservation of power to amend, could not assert that Congress had not full jurisdiction over its affairs.

We therefore submit that the provisions of the act of March 3, 1887, apply with full force to the Central Pacific Railroad Company.

POINT 4.—*The power given to the Commissioners to require the attendance of witnesses, the production of books and papers, and to invoke the aid of the courts of the United States was a valid exercise of the powers of Congress.*

This point contains the real question now under consideration. Counsel for the company allege and urge that, while conceding the right of Congress to investigate, and to appoint the Commission, the exercise of these rights can not in any way affect or impair the reciprocal and corresponding rights of the company and its officers to decline to answer. They allege, in short, that Congress had no power, in the methods prescribed for this investigation, to compel the company or its officers to make answer against their will to questions propounded to them. They deny that Congress has power to require the courts of the United States to enforce answers to such questions by their process.

They cite in this connection the case of *Kilbourn v. Thompson* (103 U. S., p. 168.) We submit that the case cited has no application whatever. The question involved was simply whether the House of Representatives possessed the general power over all citizens of the United States to punish for an alleged contempt. The decision of the court was that no such power existed. No question was presented as to the right of an officer or commissioner engaged in conducting a lawful investigation to apply to a court of competent jurisdiction for an order or process in aid of the lawful purposes prosecuted by such commissioner; nor was there in that case any application to any judicial officer for the enforcement of the right. The House declared by resolution that the trustee of the firm of Jay Cook & Co. had recently made a settlement of the interest of the estate of Jay Cooke & Co. to the disadvantage and loss, as it is alleged, of the numerous creditors of said estate, including the Government of the United States, and also declared that the courts were powerless, by reason of said settlement, to afford adequate redress to the said creditors (including, of course, the Government of the United States), and thereupon it appointed a special committee with power to send for persons and papers. The plaintiff, Kilbourn, was subpoenaed to appear before the committee, and afterwards before the bar of the

House. He declined to answer certain questions, and thereupon the Speaker, by his own warrant, committed the plaintiff to jail.

The only question involved in that case was whether the House was vested with power to commit the plaintiff, Kilbourn. In the case at bar, Congress has passed an act directing a lawful investigation. The investigation is to be conducted by commissioners. These commissioners are authorized to subpoena witnesses, and in the event of a refusal to answer to present their petition to this court, setting forth all the facts. They submit themselves entirely to the jurisdiction and power of this court, both as to the sufficiency of the power of Congress and as to the question whether the interrogatory propounded by them is a proper question to be asked of the witness, under the act from which they derive their power, and they ask this court, if it shall decide in the affirmative, to adjudge that the witness should answer, and, in the event of a continued refusal, to enforce such answer by its process.

It is clear, therefore, that the decision cited has no bearing on the question. Moreover, none of the considerations above referred to arising out of the relations between the sovereign and the corporations which it creates apply to the Kilbourn case. The investigation was ordered simply upon the allegation that the United States was the creditor of Jay Cooke & Co. The House directed an investigation into and scrutiny of the affairs of that company without the suggestion of any public object which was to be promoted or served.

The functions exercised by Congress in administering the affairs of a community so vast, representing such varied and different interests, as exist in the United States of America, require for their intelligent application full and detailed information with reference to all matters which may become the subject of Congressional investigation. Without this information Congress is worse than powerless. Its enactments will fail of their effect, and in many cases will intensify and increase the very abuses or wrongs which they were intended to abate or rectify.

We find, from an examination of the statutes of the various States of the Union, that the methods directed by this act, or methods substantially equivalent, have been pursued in relation to a vast variety of subjects.

National banks are corporations created by acts of Congress, to which to a limited extent the credit of the United States has been loaned. By section 5240 of the United States Revised Statutes provision is made for the appointment of bank examiners with full power to examine the books and papers of national banks and to subpoena and examine their officers and agents on oath. Could it possibly be claimed that this power was beyond the scope of Congress? Would any court hesitate to require a bank officer declining to answer a question propounded by an examiner, adjudged to be within the scope of his lawful inquiry, to make such answer, and, in the event of the refusal, to enforce obedience by use of its process?

Railroad commissioners appointed for the purpose of supervising the operation of railroads are, in every State where the office exists, authorized to subpoena witnesses and examine them. In the State of California this right is secured to the railroad commissioners by a provision of the constitution itself. (Article 12, section 22, Constitution of California, 1879.)

In all States the public schools are open to the complete and close scrutiny of inspectors appointed under acts of the legislature, and their powers of inspection and of examination are extended to private schools participating in the public funds.

In the State of California the eighteenth article of the Political Code provides for the appointment of a board of examiners of all claims made against the State. By section 658 the chairman is authorized to issue subpoenas and compel the attendance of witnesses before the board in the same manner that any court in this State may.

By section 1986 of the Code of Civil Procedure of California, subdivision 3, it is provided that witnesses may be required to attend before various officers named in that section or "before any officer or officers empowered by the laws of the United States to take testimony."

Inspectors of registrations are everywhere authorized by law to administer oaths to electors applying to be entered on their registers, and to examine the applicant or his witnesses.

Registers of land entries are authorized by law, in the case of conflicting claims, to examine the claimants and their witnesses.

Officers of the United States appointed for the purpose of obtaining the information and statistics required for the purposes of the census are authorized to put various questions to all persons examined by them, and by section 2191 of the United States Revised Statutes, a refusal to answer either of the inquiries authorized by law subjects the person refusing to a penalty of \$30.

Insurance departments everywhere appoint inspectors or officers charged with the duty of examining the condition of the insurance companies, and are likewise authorized to examine books, papers, and officers for the purpose of investigating the affairs of the respective companies and reporting thereon.

Can it be doubted that in a case held to be within the limits of lawful inquiry an officer charged with the duty of making such inquiry would be entitled, on presentation of the facts to any court of competent jurisdiction, to obtain an order directing the witness to answer and to the enforcement of such order by appropriate process?

In England, and in all the States of this Union, grand juries are charged with a number of public duties, in the discharge of which they inquire into the condition of prisons, hospitals, reformatories, asylums, and other quasi-public institutions. They are always authorized by law to examine witnesses. By reference to the statutes of the various States it will be found that in the discharge of these useful duties they are everywhere assisted and aided by the right to apply to competent tribunals for the enforcement of the attendance of witnesses and for process compelling answers to their inquiries.

We cite on this subject from the charge delivered to the grand jury by Mr. Justice Field in this district on the 22d of August, 1872. (2d Sawyer, p. 671.)

By a statute of the State, grand jurors of the State courts possess very great inquisitorial powers. They are required to inquire into the official misconduct of public officers of every description in their county, and are entitled to the examination of all its public records. They are bound by their oath to inquire into and presentment make of all public offenses against the law of the State committed or triable in their county of which they have or can obtain legal evidence. In order to ascertain whether or not there has been any official misconduct in any public officer they have, under the statute, authority to inspect all his books and records and subject him to a searching examination.

Additional instances might be cited of the exercise of this power, which may be said to be absolutely essential to the efficient discharge of the endless number of duties in which the public has an interest. But we submit that enough has been stated to convince the court that when the inquiry ordered is lawful, and the officer entrusted with its execution has asked a question which relates to the subject of investiga-

tion, he is entitled to the aid of the court in enforcing an answer to his question.

We cite on this subject the case of *The Commonwealth v. The Farmers' and Mechanics' Bank* (21 Pick., 542). By chapter 14 of the laws of Massachusetts, 1838, the governor was directed to appoint commissioners. It was provided that they should visit the banks, have free access to their vaults, books, and papers, and should make all such inquiries as might be necessary to ascertain their condition; that they might summon and examine the officers and agents of the banks in relation to the transactions and condition of the banks; and that an officer or agent who should refuse, without justifiable cause, to appear and testify when thereto required should be subject to fine and imprisonment. It was further provided by the said act that if upon examination of any bank the commissioners should be of opinion that it was insolvent, or that its condition was such as to render its further progress hazardous to the public, the commissioners might apply to a justice of the supreme court to issue an injunction to restrain such corporation, in whole or in part, from further proceeding with its business until a hearing of the corporation could be had, and that the justice should forthwith issue such process, and after a full hearing of the corporation upon the matters aforesaid might dissolve or modify the injunction or make it perpetual.

The power exercised by the legislature of Massachusetts in the case cited very far exceeds the limits which have been observed by Congress in the act of March 3, 1887. In the former act the commissioners appointed by the governor were armed with all the powers and authority which have been delegated to the present Commissioners under the United States statute; but the Massachusetts act made it the absolute duty of the court to issue a temporary injunction upon the report of the commissioners. The authority of the Commissioners under the act of March 3, 1887, is simply limited to propounding their questions; beyond that they of their own motion have no power whatever. The refusal of the witness to answer simply brings the entire proceedings before this court, and it has competent power to grant or refuse the relief prayed for by the Commissioners.

In the Massachusetts case above cited the authority of the legislature to appoint the commissioners, through the governor, to invest them with power to investigate, and to require a judicial officer to issue a temporary injunction on their report, was sustained by the court, Chief-Justice Shaw rendering the opinion. All the questions presented to this court in the case at bar were discussed in the case cited.

(1) The objects which the legislature had in view in the adoption of the measures.

(2) The means which they had adopted for accomplishing those objects.

(3) Whether in the ends proposed or in the means prescribed the legislature had transcended the powers vested in it by the Constitution or had exceeded the just limits of legislative authority.

In all these particulars the action of the legislature was sustained.

In no State have the divisions of the great departments of the government between the judiciary, the executive, and the legislative been more closely observed than in Massachusetts. Its courts have always been tenacious of their jurisdiction. And we submit that we may safely accept the decision cited as affording firm foundation for the proposition that Congress has in no manner exceeded the just limits of its power

in authorizing these Commissioners to conduct this investigation and to propound the question before the court. We may also safely conclude, if the report of such Commissioners was a sufficient ground for claiming a temporary injunction as a matter of right, that the report of the present Commissioners to this court is a sufficient ground for asking the issuance of the process of this court, if it be satisfied that the witness should have answered the question propounded to him.

POINT 5.—*The question addressed to Leland Stanford relates to the matter under investigation and is within the scope of the powers of Congress.*

The counsel representing the company and the witness have declined to take the objection that the question is of a criminating character. We therefore omit any discussion of this point, or of the question whether the immunity against the use of such answer in any criminal proceeding is sufficient to entitle the Commission to an answer to the question.

Some question was made as to whether, as matter of fact, the moneys covered by Mr. Stanford's vouchers had been included in the account rendered to the Government for the purpose of ascertaining the net earnings of the company. The Commissioners do not desire a decision based on this question, and therefore concede, for the purposes of this motion, that the amounts in question have not been charged as against the United States, to the end that this matter may be disposed of entirely on its merits.

That the question above propounded relates to the investigation is self-evident, for the act, in substantially the exact words of the question, directs the Commissioners to propound it.

The only question then remaining is whether this particular question is within the scope of the powers of Congress. It will not be disputed that the right to question can not extend beyond the right to investigate. The right to investigate is as to the management and the administration of the affairs of the company. Questions which have no relation to such matters, which should be prompted by idle curiosity or prompted by the desire to inflict suffering or disgrace on persons connected with the corporation solely for the purpose of gratifying a malignant feeling against them, would certainly not be within the scope of a legitimate investigation. We concede that the court has full and complete control of this question, and the right to determine absolutely whether the question relates to the investigation and is within the scope of the powers of Congress. But we submit that an interference with the rights of Congress in this direction should only be resorted to when it is made perfectly clear that the question asked is entirely beyond the limits of legitimate inquiry.

The gentleman to whom the question was propounded has been the sovereign of this corporation from its inception. He has controlled its affairs. He has at all times been familiar with its finances; and yet it appears from the uncontradicted averments of the petition that between the years 1870 and 1880 he has personally disbursed the sum of \$733,725.68, which to an individual would be a large fortune, and offers no explanation of such disbursements except that they were for "expense account." Is it a sufficient answer that the amounts covered by these vouchers have not been charged to the United States in its private account with this corporation as its creditor?

It is not because of its relation as creditor that the question is put. This corporation has been endowed with great powers and with a munificent public donation. The administration of its affairs is a matter of public interest to all our citizens. If it be true that its officers have, as is asserted, made a practice of corrupting legislatures, of poisoning the

administration of justice, and have so prostituted the trust positions which have been confided to them for the purpose of promoting their personal advantages as stockholders of this company, surely the people from whom its franchises proceeded have a right to be informed as to the facts which have occurred. The right to ask its officers whether the rates charged by the corporation have been exorbitant is conceded. The right to inquire whether their train service has been efficient, whether proper safeguards for the public have been provided, is conceded. And yet dereliction in these matters would inflict on the community but a trivial injury as compared with that which must result if they have used the funds of the company for the purpose of corrupting the law of the land.

It seems to us too clear for argument that the question propounded to Leland Stanford is entirely within the scope of a proper investigation, that it relates directly to the subject matter, and that he should be required, by the order of this court, to answer these and other questions of similar import.

POINT 6.—*The prayer of the petitioners should be granted, and an order should be entered directing the said Leland Stanford to appear before them, at a time and place to be specified, to make full answers to the question stated in the petition, and to give evidence touching the said subject of inquiry.*

And now a few comments upon some of the authorities referred to by counsel for the respondent.

Gordon v. United States (117 U. S., p. 698), does not come within the issues of the matter before the court. Careful reading will show that the statute (act of March 3, 1863, entitled "An act to amend an act to establish a court for the investigation of claims against the United States"), which was made the subject of the decision, was held not to be constitutional so far as it applied to the jurisdiction of the United States Supreme Court, for the reason solely that the province of the Supreme Court under the Constitution, being purely judicial, it could act upon nothing which would not permit it to enforce its judgment by its own process. That the statute in question conferred no other power upon it than to advise the Secretary of the Treasury upon a certain matter, and then leave it for him to say whether he would act upon the opinion of the court or not.

But even in the opinion of Taney, C. J., at page 699, will be found dictum which strengthens the position of the petitioners in the case at bar, for there, says the Chief Justice: "Congress may undoubtedly establish tribunals with special powers to examine testimony and decide, in the first instance, upon the validity and justice of any claim * * * against the United States, subject to the supervision and control of Congress or a head of any of the Executive Departments."

The learned Chief Justice undoubtedly used the words "examine testimony" in the light of taking testimony, and if they have the power to take testimony, as an incident of the power they have the right to enforce the giving of the testimony. Then how are they to enforce the giving of the evidence? By punishing a refusal to testify? The Supreme Court, in *Kilbourn v. Thompson*, holds that they cannot punish for contempt, and *a fortiori* one of their agents, to wit, a commission, cannot; then what power can? The answer is, the only power in the land—the courts of the country.

The case *United States v. Ferreira* (13 How., U. S., 40) was based entirely upon the principles laid down in *Gordon v. United States* (117 U. S., 698), and involved similar questions throughout.

The treaty and acts of Congress under investigation in that case and that of *United States v. Yale Todd*, found in a note at page 52, the question considered was whether Congress could constitute a court of justice a commissioner to act in an advisory capacity to the Secretary of the Treasury.

Gibson v. Templeton (62 Texas, 556) was a suit brought in court which the Supreme Court held the constitution of the State did not give the courts power to determine. That under the constitution of Texas "a proceeding to contest an election is not a 'suit, complaint, or plea' within the meaning of the constitution," and that although "the legislature prescribes who shall be made parties to such a proceeding, yet when the subject-matter is such as can not be litigated, the making of parties does not make the proceeding a suit," and further that the "contest of an election, being an extra-judicial question, must be regulated by the political authority of the State." Considered apart from the constitution of Texas, such a question could have no more bearing upon the matter at bar than the Sermon on the Mount.

But were the same question before the courts of the State of California would it not be considered a judicial question purely?

Vide contest of elections in Codes of California.

Van Slyke v. Templean County Farmers' Mutual Life Insurance Company (39 Wisc., 390).—The decided question was that "the constitution of the State having vested all judicial jurisdiction in courts and justices of the peace, and provided for the election of judges of all courts, the legislature can confer no judicial jurisdiction on other officers or persons, excepting power not exceeding that of a circuit judge at chambers, on court commissioners."

Cohn v. Hoff (3 Brevard, S. C., 501) holds that when the State constitution points out and prescribes how a judge should be elected, the legislature can not prescribe a different mode or manner, and confer on the governor power of appointment of a judge when constitution requires that he be elected.

The dictum in the opinion pointing out the distinction between the powers of the judiciary under our system of government and that of the English judiciary, no one disputes.

United States v. Ritchie (17 How., 524) decided that the act of Congress, passed March 3, 1851, making provision for the appointment of a board of commissioners to settle private land claims in California was constitutional, and, further, that the board was not a court under the constitution, invested with judicial powers.

Section 7 of the act provided "That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, * * * to issue writs of subpœna commanding the attendance of a witness or witnesses before the board or any commissioner."

The statute being by the Supreme Court in the case last cited *supra* expressly held constitutional, and at the same time held not to vest judicial powers upon the board, now, under the doctrine of the case of *Kilbourn v. Thompson* (103 U. S.), could the board enforce the attendance of witnesses before it? As the statute does not point out the mode in that case, we say it would be accomplished in a constitutional way by applying to a court of the United States for compulsory process, as a necessary incident to the grant of power to administer oaths and take testimony.

And if the above statute had contained the language of the statute of March 3, 1887, upon the subject of applying to the courts of the

United States for compulsory process, could any reasonable person doubt the power of the court applied to to compel the attendance of the witness and compel him to purge himself if contumacious? And in the absence of provisions of the nature of those contained in the last act cited, the board of land commissioners, had the statutes of California contained provisions similar to those found in section 1986 of the code of civil procedure of California, might have found adequate aid in enforcing witnesses to testify by applying to a State court.

Section 1986, Code of Civil Procedure, sub. 3, reads :

The subpoena is issued to require attendance before * * any officer or officers empowered by the laws of the United States to take testimony; it may be issued by any judge or justice of the peace in places within their respective jurisdiction; with like power to enforce attendance, and, upon certificate of contumacy to said court, to punish contempt of their process.

Yet, says the respondent, the land commission of California could take only such evidence as a party summoned before it might, as a matter of grace, permit.

Would not such a doctrine, if urged and upheld in the early days of California, have virtually rendered this great commission absolutely powerless to accomplish the ends for which it was created?

The Supreme Court of the United States and district court of California have time and time again laid down the doctrine that the functions of the California land commission were essentially political, and not judicial, in their nature.

Yet, who then, or now, even, excepting the respondent here, would invoke the heresy that the powers of the commission, created by solemn act of Congress, and which the highest judicial power in the land had pronounced constitutional, could be haltered, obstructed—yes, virtually rendered nugatory by a witness who claims the right to give what evidence he may please to give, to withhold what he may please to withhold?

The whole argument of the company's counsel is based on a fallacy. They assert that the demand that process issue to compel a witness to answer is an encroachment on the functions of the judiciary; the fact is, that while the three great departments of Government are distinct, they are bound together by the closest ties of mutual interest and mutual duty. Each must and should aid the other. No department, no executive, no commissioner, invades the functions of the judiciary when he asks that it issue its process to compel obedience to law. In all cases the simple question is whether the act, the examination, the hearing of the claim, or the investigation, is authorized by law. In this way only can the functions of the bank examiner, the inspector of insurance, the commissioners of claims, the census officers, the grand juries, and all other officials who are charged with administrative duties, but who possess no judicial powers whatever—in this way alone can these duties be efficiently discharged.

Ex parte Vallandigham (1 Wall., 243) decided that the appellate powers of the Supreme Court as granted by the Constitution are limited and regulated by the acts of Congress, and must be exercised subject to the exceptions and regulations made by Congress, and that the above case did not come within that category; and, further, that a proceeding by court-martial "is not in law or equity within the meaning of those terms as used in the third article of the Constitution."²⁵¹

Burgoyne v. Board of Supervisors (5 Cal., 19) adds its voice to the threadbare theme that each of the three cardinal branches of our republican form of government, executive, legislative, judicial, is independent (?) of the others—no one can exercise the functions of the others.

People v. Sanderson (30 Cal., 160) decides that the duties of trustee of the State library properly fall within the sphere of the executive department, and that a chief-justice of the State, while such, is prohibited by the State constitution from exercising the functions and duties of trustee of the State library.

There is not the slightest shadow of a claim on the part of the petitioners at bar that the act of Congress in question (March 3, 1887) confers upon the commissioners, petitioners herein, a single judicial function. They can determine nothing, any more than could the California land commission, *ubi supra*. No right can be changed, created, or enforced. In fine, their functions are plainly defined, and do not encroach in the slightest degree upon any department of the United States Government, nor relate to any other than the one to which they clearly belong.

Smith v. Strother (68 Cal.).—In this case the distinction between what is a legislative and what a judicial act is clearly pointed out, and the court, speaking through Mr. Justice Thornton, finds authority for its conclusions in the language of Mr. Justice Field in the Sinking Fund case reported in 99 U. S., from which we have already quite extensively quoted, as an authority for the position of the petitioners in the matter now before the court.

By the act of the legislature of March 21, 1885, it was attempted to confer upon the supreme court legislative functions, which attempt we are quite willing to join with counsel for respondent here in condemning.

We insist, again, that whatever powers the statute of Congress of March 3, 1887, confers upon the circuit and district courts of the United States, for the purpose of enabling the purpose and intent of the whole act to be carried out, are purely judicial in their nature.

The authority conferred is to "hear and determine" in the first instance; and in the second that of "enforcing its determination, by its own process," in the very fullness and plenitude of its power in that behalf.

United States v. Union Pacific Railroad Company (11 Blatch., 385).—The case, we respectfully submit, is not authority upon any legitimate inquiry arising in the case at bar.

There is no attempt here by the United States "to convert to itself the property of another, by its own declaration or its own authority;" nor any to obtain "redress for alleged fraudulent acts on the part of the directors and managers of the * * * railroad company, in breach of their duty to the shareholders."

In re Ziebold (33 Fed. Rep., 791).—The case is a false analogy to the one at bar. It grew out of an attempt by the legislature of Kansas to confer upon a county attorney authority to summon witnesses to testify before him with power to punish for contempt in case of refusal to appear.

The court, per Foster, J., held that the authority vested in the county attorney "on the mere unsworn statement of any person, and without any case pending before him, * * * to set this judicial machinery in motion, with no restriction as to whom he shall summon before him to testify, and no limitation but his own good-will as to the scope of his investigation, fortified by a power to exact answers to any questions he sees proper to ask, almost despotic in its severity," * * * is an "attempt to unite the judicial with the executive branch of civil government; and when the law-making power and the power which declares and applies, as well as that which executes and administers the law, are

united and invested in one person or body, it becomes a despotic and not a constitutional government."

Is the Pacific Railroad Commission endowed with any of these judicial attributes? Are they empowered, under the act of March 3, 1887, to summon witnesses before them, "and visit upon them severe penalties" should they refuse to come or to testify, with "no limitation but their own good-will as to the scope of their investigation?" It would baffle the ingenuity of the learned counsel for respondent to find any such power in the statute.

So long as a witness summoned before the Commission proves willing to attend and give answer there is, of course, no need of compulsion; but when he proves contumacious and some compulsion is necessary, does the act empower the Commission to become the judges as to whether or not the question asked the witness is relevant to the matters under investigation as defined in the statute, and adjudging it so, to visit penalties upon him? Clearly not. The statute vests no such power or authority in the Commissioners. It defines and limits the scope of their investigation, and whether or not they keep themselves within these limitations is purely a judicial question which Congress has deferentially left to the judiciary to determine.

When, in the judgment of the Commissioners, a question is pertinent to the matter under investigation, and a witness denies it, it is made the duty of the judicial branch of the Government, upon a proper application, to look into the statute to find authority in the Commissioners to propound the question, and also to apply those other tests whereby its relevancy and competency may be determined. And when, after due deliberation upon the law and the facts, the court determines either one way or the other, it pronounces a judgment—1st, upon the statute; 2d, upon the scope of the inquiry or investigation; 3d, and from the two former, the relevancy and competency of the question propounded; and, whichever way its judgment goes, obedience must follow; if the court finds the inquiry a legitimate one, properly instituted by competent authority, and the question relevant, the witness must reply. If the judgment of the court should be otherwise, the Commissioners are equally bound to refrain from asking it; and in no conceivable sense does the court thus acting become ancillary to or act in an advisory capacity to the Commissioners.

The primary right of the Commissioners to ask a question is a right defined by the statute, but to be determined by the judiciary, and once determined, from it the corresponding duty of the witness flows as naturally as the succession of day and night.

At page 795 the learned judge used language with reference to the powers of a grand jury which, we submit, furnishes as pure an analogy of the situation of the parties concerned here as could well be devised. The language is: "*Nor can a grand jury issue a subpoena for a witness or decide the competency of a question asked, or punish for a contempt. These matters rest with the court.*"

In principle is there a shade of difference between the powers of the Commissioners under the statute in question and those exercised by a grand jury in performing the duties devolved upon them by statute? Does a grand jury exercise judicial functions? Can it hear *and determine*? Can it pronounce a judgment which any person or thing in the world would be bound by?

Suppose the grand jury of the city and county of San Francisco had summoned the sheriff of the city and county before it, and had propounded to him the following question: "Mr. Sheriff, have you 'vol-

untarily permitted' the escape of John Doe, a prisoner once in your custody?" And the sheriff had replied, "I decline to answer," and the jury had then applied to the court for an order to show cause upon the sheriff why he should not make the answer, would the court have heard him say, "There is no 'case' before the court? The grand jury has no right to apply to this court to aid it in compelling me to answer unless I see fit to—I am a citizen of the United States. I have thrown around me those guaranties of personal liberty and private security which have come down to all of us alike from the days of the Tudors, and for attempting to curtail which the head of a Charles rolled from the block?"

Our opinion is that before the court would incline its ear seriously to such a showing of rhetorical right it would examine the provisions of section 923 of the penal code of California, which says: "The grand jury must inquire into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county," taken in connection with section 108 of the same code, which says: "Every * * * sheriff * * * who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody is punishable, etc.," before deciding upon the relevancy of the question, and the right of the jury to propound it.

With the policy or wisdom of the legislative department of the Government in directing an investigation or inquiry this court has nothing to do.

The only question which the court will permit itself to ask is: Has the legislature directed the investigation; does it invade any constitutional right of any one to be investigated?

In conclusion we will say, that unless this power to investigate all public and quasi-public enterprises, undertakings, and institutions shall be found to exist as one of the inherent powers of a sovereign people, a power which each State legislature in the Union may invoke as well as Congress, then before the decisions of the court in this case must fall every bank commission, railroad commission, board of examiners, and national bank inspector in the land.

We respectfully submit, for the reasons given, that the prayer of the petitioners should be granted.

JOHN T. CAREY,
United States Attorney.

HENRY C. McPIKE,
Assistant U. S. Attorney, Counsel for Petitioners.

BRIEF OF MESSRS. McALLISTER & BERGIN FOR LELAND STANFORD.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

IN THE MATTER OF

*The United States Pacific Railway Commission's application to compel
Leland Stanford to answer.*

[Points and authorities.]

The act of Congress of July 1, 1862, created and constitutes the basis of the relation between the company and the Government, speaking of which in the *United States v. Union Pacific Railroad Company* (91 U. S., 81), the court say:

It is true the scheme contemplated profit to individuals, for without a reasonable expectation of this capital could not be obtained, nor the requisite skill and enterprise. But this consideration does not in itself change the relation of the parties to this suit. This might have been so if the Government had incorporated a company to advance private interests, and agreed to aid on account of the supposed incidental advantages which the public would derive from the completion of the projected railway. But the primary object of the Government was to advance its own interests, and it endeavored to engage individual co-operation as a means to an end—the securing of a road which should be used for its own purposes. The obligations, therefore, which were imposed on the company incorporated to build it must depend on the true meaning of the enactment itself, viewed in the light of contemporaneous history.

The nature of this relation is more extensively considered in *United States vs. Union Pacific Railroad Company* (98 U. S., 613, 614, 615), and the same case in the 11th Blatch., 385, 393, 397, 399, 400, and 401. Upon examination made in this case of the relations of the companies named in the act to the Government of the United States the court there held, that the relation thereby created was that of debtor and creditor, and that in respect to the property, in which the Government had no beneficial interest, that is to say, in respect to all the property and earnings of the company outside of the percentage of net earnings reserved to the Government, the companies occupied the relation of private proprietors, with whose proprietary interests and their control the Government can exercise no other power of interference than it can in respect to the proprietorship, control, and management of the property of any other private person. The power reserved to alter or modify the act of Congress is coupled with the obligation to exercise it with *due regard to the rights of the company*. Under exercise of this power the legal

rights of the companies are reserved, and they remain as fully entitled to the protection of the law as the rights of any other private individual. The mere fact that the companies are artificial creations of law, called into existence by the consent of the parties co-operating in the organization of corporations, does not leave either the companies, the artificial creations, or the beneficiaries, of which they are simply the representatives, destitute of the benefit of the protection of all the constitutional guaranties assured to all persons for the protection of life, liberty and property. (*Ex parte Parrott*, 6 Sawy., 374; *County of San Mateo v. Southern Pacific Railroad Co.*, 8 Sawy., 264-5; *Santa Clara Co. v. S. P. R. R. Co.*, 118 U. S., 396.)

Among those guaranties is, that no man shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation. Of the extent to which this constitutional guaranty assures protection to private property an exhaustive discussion will be found in the case of *Wynehamer v. The People* (13 N. Y., 383), the court in that case declaring that "the true interpretation of these constitutional phrases is, that where rights are acquired by the citizen under the existing law there is no power in any branch of the Government to take them away; but where they are held contrary to the existing law, or are forfeited by its violation, then they may be taken from him—not by an act of the legislature, but in the due administration of the law itself, before the judicial tribunals of the State. The cause or occasion for depriving the citizen of his supposed rights must be found in the law as it is, or, at least, it can not be *created* by a legislative act which aims at their destruction. Where rights of property are admitted to exist, the legislature can not say they shall exist no longer; nor will it make any difference although a process and a tribunal are appointed to execute the sentence. If this is the "law of the land" and "due process of law" within the meaning of the Constitution, then the legislature is omnipotent. It may, under the same interpretation, pass a law to take away liberty or life without a pre-existing cause, appointing judicial and executive agencies to execute its will. Property is placed by the Constitution in the same category with liberty and life." * * *

Page 395:

We are brought, then, directly to the question, does the "act for the prevention of intemperance, pauperism, and crime," in a just constitutional sense, deprive the citizens of this State of their property in intoxicating liquors? We have already seen that this species of property is just as inviolable as any other. That by the operation of this law its commercial value is annihilated; that it can not be sold; that it is unlawful to keep it; that all legal protection is withdrawn from it; and that it becomes a public nuisance. Is the owner "deprived" of it within the fair meaning of the Constitution? I bring the act to this particular test, because if it can stand with this clause of the Constitution it can with every other.

Now, I can form no notion of property which does not include the essential characteristics and attributes with which it is clothed by the laws of the society. In a state of nature property did not exist at all. "Every man might then take to his use what he pleased, and retain it if he had sufficient power; but when men entered into society, and industry, arts, and sciences were introduced, property was gained by various means, for the securing whereof proper laws were ordained" (Tomlin's Law Dic., Property, 2 Bl. Com., 34.) Material objects, therefore, are property in the true sense, because they are impressed by the laws and usages of society with certain qualities, among which are, fundamentally, the right of the occupant or owner to use and enjoy them exclusively, and his absolute power to sell and dispose of them; and as property consists in the artificial impression of these qualities upon material things, so whatever removes the impression destroys the notion of property, although the things themselves may remain physically untouched.

Nor can I find any definition of property which does not include the power of disposition and sale, as well as the right of private use and enjoyment.

Page 397:

The statute under consideration, without reference to its provisions for the seizure and physical destruction of intoxicating liquors, by force of its prohibitions alone, sweeps them from the commerce of the State, and thus annihilates the quality of sale, which makes them valuable to the owner. This is destructive of the notion of property. I need, perhaps, take no further notice of their qualified vendibility for the Sacrament and the other special uses named in the act. These are only the occasional and incidental uses of the article. It is the general and primary use which is aimed at. It is the mass of property which is struck down; and the possible conservation of an extremely insignificant portion can not change the character of the law.

The power of disposition thus declared inherent in property and secured by the Constitution not merely imports right of the owner to sell and dispose of it, but to sell and dispose of it at pleasure, and when and where and how he pleases, subject only not to do so in contravention of the general laws of the land. It excludes and is incompatible with the idea that the owner in exercising such power of disposition can in any wise be called to account therefor, or be compelled to disclose the mode and manner in which he has seen fit to exercise this his legal and constitutional right. And it is upon this principle of the inviolability of private property and private ownership that it is not only thus secured by this provision of the Constitution, but the owner is protected against unreasonable searches and seizures. (*Boyd vs. U. S.*, 116 U. S., 622, 629, 630, 631, 632, 634; *Cooley on Constitutional Limitations*, 376; *In re Ziebold*, 23 Fed. Rep., 793.)

Not only, therefore, is property thus secured under State and Federal Constitution, but *the person of the owner is equally secured*. To own or hold property without personal liberty would be but a poor boon. Hence it is that the Constitution declares that no man shall be deprived of liberty any more than property or life, and the liberty thus secured guaranties to the citizen full exercise of all his mental and physical faculties free from governmental interference, save and except in so far as the same may occur in the legitimate and orderly course of the administration of the general laws of the land.

Mr. Mills, in his work on Liberty, page 24, clearly and distinctly declares the true principle underlying the legitimate province of governmental interference with the liberty of the citizen. The learned author says:

The only part of the conduct of any one for which he is amenable to society is that which concern others. *In the part which merely concerns himself his independence is of right absolute. Over himself, over his own body and mind, the individual is sovereign.*

What kind of liberty is that which leaves the citizen liable to inquisitorial examination at the pleasure of the legislature? What kind of a constitutional guaranty is that which would thus expose him to the whims and caprices of any one department of the Government? If in respect to matters not arising in the course of judicial proceedings he may be compelled to disclose his private affairs and make known to the world that which lies treasured in his own bosom, where are the vaunted guaranties of freedom? In respect to such subjects, in framing the organic law, the people have not vested the legislature, so to speak, with jurisdiction over such matters, and they are as incompetent to invade or affect the same as would be a judicial tribunal that should undertake to pass judgment in a matter entirely without its jurisdiction.

No star chamber can ever be formed under the constitution of the State of California or the United States. (First Blackstone, 231; 4th Blackstone, 266, 310, 429, 433, 437; 2nd Hume's Hist. of Eng., 592; 4th Hume's Hist. of Eng., 200, 491, 495, 497, 498, 499; 5th Hume, pages 18

and 59; 1st Macaulay's Hist. of Eng., p. 98; 1st Hallam's Constitutional History, 65 to 67; 2nd Hallam's Constitutional History, pages 39 and 317; Loan Association *vs.* Topeka, 20 Wallace, 662; *Ex parte* Parrott, 6 Sawy., 374; Slaughter House Cases, 16 Wallace, 76, 90, 105, 113, 116.)

In the language of Justice Swayne in the Slaughter House cases (16 Wall., 127):

Life is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny.

Interference within this realm is beyond the pale of constitutional legislation.

The court accordingly, in *Kilbourn vs. Thompson* (103 U. S. 190), declared:

Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.

Page 193.

If the investigation which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the Government. We think it equally clear that the power asserted is judicial and not legislative.

The preamble to the resolution recites that the Government of the United States is a creditor of Jay Cook & Co., then in bankruptcy in the district court of the United States for the eastern district of Pennsylvania.

If the United States is a creditor of any citizen, or of any one else, on whom process can be served, the usual, the only legal mode of enforcing payment of the debt is by a resort to a court of justice. For this purpose, among others, Congress has created courts in the United States, and officers have been appointed to prosecute the pleas of the Government in these courts. * * *

Page 194:

If the settlement to which the preamble refers as the principal reason why the courts are rendered powerless was obtained by fraud, or was without authority, or for any conceivable reason could be set aside or avoided, it should be done by some appropriate proceeding in the court which had the whole matter before it, and which had all the power in that case proper to be intrusted to anybody, and not by Congress or any power to be conferred on a committee of one of the two houses.

The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument on the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cook & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the Government of their country. By "fruitless," we mean that it could result in no valid legislation on the subject to which the inquiry referred. (*People vs. Keeler*, 99 N. Y., 485.)

Not only is the inquiry inadmissible for these reasons, but on the further ground that the act of Congress itself clearly shows intention to extend the investigation to matters involving liability to criminal prosecution.

By the terms of the act evidence given on such investigation is declared inadmissible in any criminal suit or proceeding, thus clearly and unmistakably showing that the subject matter of the investigation designed was intended to embrace matters which might render the parties

amenable to criminal prosecution. It is true that the inquiry is thus attempted to be made legal by excluding incriminating testimony that may be given in the course of the investigation from admission in any criminal prosecution, and it is no less true that there are some decisions undertaking to vindicate and uphold this species of legislation. Its correctness, however, has never been definitely determined by the highest court of the land, and is open to question upon just principles to unanswerable argument. (*State vs. Girvin*, 13 Lea, Tenn., 60.)

The line of reasoning upon which these authorities proceed is that the design of the constitutional provision is to protect the citizen against being compelled to bear witness against himself in any criminal prosecution, and that as that is the end designed to be secured by this constitutional provision, if such end be accomplished otherwise through legislation, it is competent for the legislature to declare that the parties shall be compelled to testify.

The vice of the argument lies in the assumption that it is competent for the legislature to compel the citizen to barter away his constitutional guaranty for this statutory privilege. There is no power in the Government to deprive the citizen of the benefit of any guaranty secured to him by the Constitution, and it is wholly illogical and unwarrantable to say that because the supposed end designed to be secured by the constitutional guaranty is accomplished by legislation, therefore may the legislature deny to him the benefit of the constitutional guaranty itself. Where, we would ask, is the warrant of the Constitution authorizing the legislature to set aside any of these provisions or to deny the citizen any immunity thereby secured to him? Is it not the veriest paltering with the greatest rights known to law, and secured to the citizen, to hold that he can be compelled to thus barter away his constitutional rights? Of course it is an entirely different question as to whether or not the legislature may not extend immunity from punishment to the person who may see fit to give evidence incriminating himself. That is a matter dependent upon different principles, not having any just application to the principle involved in this class of legislation.

Of course it must be manifest to the court that while the terms of the act of Congress might in this instance secure a party giving evidence from having the same used against him in any criminal prosecution instituted in a Federal court, it can not protect him against such consequences in a State tribunal, nor can it shield him from the obloquy and odium attached to the giving of such testimony. Whatever may be the validity of this provision of the act of Congress in the tribunals of the United States, it can have no operation in the State forum. Thus, under the provisions of this act, may a party be compelled to give evidence of an incriminating character, which not only may be used against him in State tribunals, but which will necessarily tend to degrade him and expose him to obloquy and odium.

Suggestion was made on the argument that declination to answer should have been upon this particular ground. But it is obvious that any such claim necessarily implies commission of that, guilt of which is entirely denied, and to make claim of privilege would necessarily import the very thing the party denies, a right to inquire into which is most distinctly and unequivocally challenged.

The constitutional right of a citizen should not be thus confounded with a mere rule of procedure properly obtaining in the ordinary course of procedure in the trial of criminal and civil cases. The rule itself in this respect is open to just doubt, and in our humble judgment is founded in error.

The general rule of which it has been made a part is one founded in experience and convenience, and having a distinct and intelligible purpose. The object of the rule is that a judge or court may be informed of the grounds upon which immunity is claimed or a ruling is asked, so that the court may, if so advised, correct its ruling accordingly. It is thus designed alike for the benefit of the court and the benefit of the adverse party. When informed of the grounds of the claim the adverse party may be able to supply proof by other competent evidence. The purpose of the rule is to place the court and the adverse party fully in possession of the facts, so that all may intelligently act accordingly. But where the objection is one that can not be changed by mere form of proof, this rule does not obtain. As correctly observed in *Nightingale vs. Scannel* (18 Cal., 323):

The defendant claims that the evidence was not admissible for *any purpose*; that a statement of the ground upon which it was objected to would have been superfluous and was not therefore required. This view is based upon what appears to us to be the proper rule in such cases, and we see no good result to be accomplished in holding parties to a more strict and rigid practice in these matters.

Where, under the Constitution and the laws therefore, the party is entitled to the immunity claimed, it would seem that he should not be compelled to make the claim thereto in such a manner as to expose him to the odium attached to the mere assertion of his legal and constitutional right. The rule, however, has no application to the case now before the court. The question is here one of constitutional power. It is to compel the answers, and the court is here now fully and distinctly advised of all the grounds of objection interposed to answering.

To hold, therefore, that the rule had any application in the present instance would be to merely stick in the bark. Not only is the investigation attempted to be made unauthorized under the Constitution and laws, but this court, under the Constitution and the laws, has not jurisdiction to extend to it the aid invoked.

The United States courts have consistently declared from the earliest date that they can only exercise judicial powers.

The authorities on the point are: *Hayburn's Case* (2d Dall., 409); *United States vs. Ferreira* (13 How., 40-47); *U. S. vs. Todd* (13 How., U. S., 52); *United States vs. Ritchie* (17 How., U. S., 533, 534); *Ex parte Vallandigham* (1 Wall., 252); *Gordon vs. United States* (2 Wall., 561; 117 U. S., 698); *Burgoyne vs. Board of Supervisors* (5 Cal., 19); *Exline vs. Smith* (*Ibid.*); *Dixie vs. Hulburt* (*Ibid.*, 343); *People vs. Sanderson* (30th Cal., 166); *Smith vs. Strother* (68 Cal., 197); *Gibbs vs. Templeton* (62 Tex., 556); *San Slyke vs. Trempeleau County Farmers' Insurance Company* (29 Wisc., 392); *Cohen vs. Hoff* (3 Brevard, S. C., 501).

These cases very clearly show what constitutes judicial power, and that, where the action of the court is not followed by judgment determinative of the rights of the parties litigant, it is not in any proper or legal sense the exercise of judicial power, and therefore can not be vested in any of the courts of the United States.

Neither the action of the commissioner of this court upon the present application partakes of this character.

Neither the action of the one nor the other is in any wise determinative of the rights of any person, and therefore it is not of a character jurisdiction of which Congress can constitutionally vest in this court.

Upon these principles we therefore respectfully submit that the prayer of the petition be denied.

Respectfully submitted.

MCALLISTER & BERGIN,
Counsel for Leland Stanford.

BRIEF OF L. D. McKISICK, ESQ., FOR LELAND STANFORD.

IN THE CIRCUIT COURT FOR THE NINTH CIRCUIT, NORTHERN DISTRICT
OF CALIFORNIA.

Before the honorable Stephen J. Field, one of the Justices of the Supreme Court; honorable Lorenzo Sawyer, judge of the circuit court; Honorable Ogden Hoffman, judge of the district court for the northern district of California; and the honorable George M. Sabin, judge of the district court for the district of Nevada. In the matter of the application of the Pacific Railway Commission for an order to compel Leland Stanford to answer certain questions propounded to him by the Commissioners while prosecuting their inquiries under the act of March 3, 1887.

I.

The provision of the act of March 3, 1887, creating the Commission, which authorizes one or more of the Commissioners to invoke the aid of the circuit or district court of the United States to assist them in compelling a witness to attend, and to answer questions, is a species of legislation so novel, that I have been wholly unable to find any judicial decision upon that or any analogous legislation.

The court is asked to make an order (not to render judgment or decree) compelling a citizen to answer questions propounded to him by a political agent of the legislative and executive departments of the government, over which it has no jurisdiction, in a matter in which it has and can have no concern.

The proceeding is inaugurated for the purpose of invoking the aid of the court, and to procure an order which, if not complied with, may result in a further order of the court to punish a citizen for no act done, or omitted to be done, in a judicial proceeding pending in court, but for acts done, or offenses alleged to have been committed, against the political department out of court.

Undoubtedly, either House of Congress may appoint committees of its members, and authorize them to make inquiries, and report the result of those inquiries to the House. So also Congress may enact a law, with the approval of the President, creating a commission, and authorize it to inquire into matters of public concern for the information of Congress. But can Congress confer power upon such committee or commission to invade the private rights of the citizen, or institute or initiate hostile proceedings against him, and, if resisted, fine and imprison him; in other words, deprive him of his property and of his liberty? If such power exists, the life, liberty, and property of the citizen are subject to the mere edict of Congress. In my opinion, no

warrant for such power can be found in the Constitution of the United States nor in the law of the land.

Its attempted exercise is in direct conflict with the provisions of the fourth and fifth amendments of the Constitution.

I am not discussing the power of Congress to punish by fine or imprisonment for a breach of its privileges where the offender is the aggressor, but a case in which a committee or commission has instituted or initiated hostile proceedings against the citizen, and seeks to deprive him of his liberty and property without other warrant or authority than an act imposing upon it a mere duty to inquire and report.

In *Kilbourn vs. Thompson* (103 U. S., 168) the Supreme Court decided that the committee was appointed to investigate a subject not within the power of the House to investigate, and the action of the committee was therefore *ultra vires* and no defense. So that it is clear that these committees or commissions are not above the law. If they can become the aggressors in making inquiries, and institute proceedings resulting in depriving the citizen of his liberty or property, nothing would be easier than for Congress to become a despotism.

The fourth and fifth amendments are as follows:

FOURTH AMENDMENT.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT.

No person shall be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law.

Believing, as I do, that the questions propounded by the Commission to the witness violate the letter and spirit of those amendments as certainly and as clearly as the order made on Boyd did, which will be found reported in 116 U. S., 607, in my opinion the court will discharge the rule, on the ground that neither the Congress nor the Commission can constitutionally require them to be answered.

II.

Is the proceeding before the court a judicial proceeding, and if judicial, is it one of which the courts of the United States can take cognizance?

The provision of the act under which the petition was filed is as follows:

Any of the circuit or district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring any such person to appear before said Commissioners, or either of them, as the case may be, and produce books and papers, if so ordered, and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

The jurisdiction of a court to compel the attendance of a witness is merely ancillary.

In 1st Greenleaf on Evidence (section 309), in treating of the attendance of witnesses, it is said:

And *first*, in regard to the method of procuring the attendance of witnesses, it is to be observed that every court having power definitely to hear and determine any suit, has by common law inherent power to call for all adequate proofs of the facts in controversy, and to that end to summon and compel the attendance of witnesses before it.

In Rapalje's Laws of Witnesses (section 301) the same doctrine is laid down. I find no trace of any authority or jurisdiction in the courts to issue a subpoena, or to make an order requiring a witness to attend before some other court, or at some other place, to answer questions in a suit or controversy of which the court has no power definitely to hear and determine, with the exception of letters rogatory, and the statutory provisions providing for the examination of witnesses before commissioners appointed by a court of some other State or a foreign country, which provisions are but a substitute for letters rogatory. The jurisdiction in such cases rests upon the principle of international comity.

This whole subject is explained in 1st Greenleaf (14th edition, section 320, and note). But in those cases there is always a suit pending in the court out of which the letters or the commissions issue.

In my opinion the order asked for in this proceeding is in no sense judicial. Congress could just as well have authorized the Commission to invoke the aid of the United States marshal, and commanded him to seize the contumacious witness and carry him before the Commission and compel him to answer, or confine him in jail during the pleasure of the Commissioners.

The fact that Congress has attempted to impose this duty upon the courts does not make it judicial; the courts determine the question.

In 2d Story on the Constitution (sec. 1777) it is said:

The functions of the judges of the courts of the United States are strictly and exclusively judicial. They can not, therefore, be called upon to advise the President in any executive measure, or to give extra-judicial interpretation of law, or to act as commissioners in cases of pensions, or other like proceedings.

In support of the rule there stated he cites 5 Marshall's Life of Washington (ch. 6, pp. 433-441); Sergeant on Const. (ch. 29, p. 363); *Marbury vs. Madison* (1 Cranch, 171); *Dewherst v. Coalhart* (3 Dall. R., 409); *Hayburn's Case* (2 Dall. R., 409-410, and note); and to those may be added *United States vs. Ferreira* (13 Howard, p. 40, and note); *Gordon vs. United States* (117 U. S., 697).

The investigation and inquiry authorized by the act creating this Commission are purely political, and it is the settled doctrine of the Supreme Court that in such cases the judicial department of the Government will not interfere. (*Luther vs. Bordon*, 7 Howard p. 1; *State of Georgia vs. Stanton*, 6 Wall., 50; *Mississippi vs. Johnson*, 4 Wall., 475.)

In *Georgia vs. Stanton* the decision of the court dismissing the bill is put upon the sole ground of want of jurisdiction, because the questions involved were purely political.

III.

But if the proceedings now before the court be judicial, does it fall within the judicial power of the courts of the United States? Courts of the United States are not courts of inferior jurisdiction, but are courts of limited jurisdiction, and consequently the jurisdiction of the court must always be shown on the record, and depends upon two questions:

First. Has Congress extended the jurisdiction of the court over the subject matter, or over the parties?

Second. Is the act constitutional?

First, as the provisions of the Constitution.

The first section of the third article of the Constitution of the United States provides that—

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish.

And the second section of the third article provides that—

The judicial power shall extend to all *cases* in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to *controversies* to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects.

Judicial power means that power with which courts are clothed for the purpose of the trial and determination of causes. (*United States vs. Arredondo*, 6 Peters, 691.)

It is not sufficient to bring a matter under the judicial power that it involves the exercise of judgment upon law and facts. (*United States vs. Ferreira*, 13 Howard, 40.)

Mr. Marshall, in his great speech in the House of Representatives on the Robins resolutions, defined the judicial power of the United States, as reported in the appendix to 5 Wheaton, pp. 16 and 17, in the following language:

The gentleman from New York had relied upon the second section of the third article of the Constitution, which enumerates the cases to which the judicial power of the United States extends, as expressly including that now under consideration. Before he examined that section it would not be improper to notice a very material misstatement of it, made in the resolutions offered by the gentleman from New York. By the Constitution the judicial power of the United States is extended to all cases in law and equity arising under the Constitution, laws, and treaties of the United States; but the resolutions declare the judicial power to extend to all *questions* arising under the Constitution, treaties, and laws of the United States. The difference between the Constitution and the resolutions was material and apparent. A case in law or equity was a term well understood and of limited signification. It was a controversy between parties which had taken a shape for judicial decision. If the judicial power extended to every question under the Constitution, it would involve almost every subject proper for legislative discussion and decision; if to every question under the laws and treaties of the United States, it would involve almost every subject on which the executive could act. The division of power which the gentleman had stated could exist no longer, and the other departments would be swallowed up by the judiciary. But it was apparent that the resolutions had essentially misrepresented the Constitution. He did not charge the gentleman from New York with intentional misrepresentation; he would not attribute to him such artifice in any case, much less in a case where detection was so easy and so certain. Yet this substantial departure from the Constitution in resolutions affecting substantially to unite it, was not less worthy of remark for being unintentional. It manifested the course of reasoning by which the gentleman had himself been misled and his judgment betrayed into the opinions those resolutions expressed.

By extending the judicial power to all cases in law and equity the Constitution had never been understood to confer on that department any political power whatever. To come within this description a question must assume a legal form for forensic litigation and judicial decision. There must be parties to come into court who can be reached by its process and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit.

And in *Osborn vs. U. S. Bank* (9 Wheaton, on p. 819) he said substantially the same thing. And in 2 Story on the Constitution (sec. 1646) the same definition of the words "case" and "controversies" is given.

In the *Mayor vs. Cooper* (6 Wall., on p. 252), Mr. Justice Swayne, delivering the opinion of the court, said:

As regards all courts of the United States inferior to this tribunal two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. Their concurrence is necessary to vest it.

Although this Pacific Railway Commission has come into this court and invoked its aid, they have not brought the United States with

them, neither have they brought into court the Central Pacific Railroad Company. In *Postmaster-General vs. Early* (12 Wheaton R., 136-149) it was decided that the United States were not parties to the action, although the suit solely regarded their interests. So that it appears clear that we have neither a case nor a controversy. There are no parties, no subject matter about which there is a controversy, within the jurisdiction of the court, consequently there is no jurisdiction, for that means the power to hear and determine the subject matter in controversy between parties to a suit. (*Rhode Island vs. Massachusetts*, 12 Peters, 657.)

Bouvier says the word controversy means a dispute arising between two or more persons; controversy, says the Supreme Court in *Chisholm vs. Georgia* (2 Dall., 419), is a civil and not a criminal proceeding.

This argument must not be understood to deny jurisdiction to the circuit and district courts in all cases where there are not parties plaintiff and defendant. There are cases in which the court has jurisdiction in *ex parte* cases, notably in habeas corpus cases; but it must be remembered that the writ of habeas corpus is a constitutional writ, and the right to apply for it is a constitutional right; but after all it is never applied for until after there has been a case or a controversy in which the party applying was in some way deprived of his liberty. That was so in Fisk's case (113 U. S., 713). He was sued in the supreme court of the State of New York. Under a statute of that State, upon the application of the plaintiff in the action, the court made an order requiring him to go before a commissioner to be examined before issue or trial; he moved to vacate the order; the motion was denied and he appealed; the court of appeals affirmed the order; in the meantime he removed the case into the United States circuit court; that court made an order directing him to obey the order made in the cause by the State court before removal, and also made an order of its own, requiring him to go before the commissioner and be examined; he refused to obey both orders, and was thereupon fined and imprisoned; he applied to the Supreme Court for a writ of habeas corpus, which was granted, upon the ground that after the case was removed into the circuit court, he was not bound to obey the order of the State court, and that the circuit court had no jurisdiction to make the order which it did.

I call the attention of the court to that case, for the reason that if the court shall make the order asked for here, it will be found to be very instructive.

IV.

As to the questions asked the witness by the commission: Having argued that subject fully at the bar, I shall only call the attention of the court to the authorities. A witness cannot be compelled to answer a question tending to disgrace him, or to degrade his moral character, or render him infamous, or subject him to a criminal prosecution, or to a suit for penalties, or to litigation of any kind. The scope of the inquiry authorized by the act under which the commission is proceeding is broad enough to cover nearly every one of the enumerated privileges.

The present question relates to expenditures of money to influence legislation. Section 5450 of the Revised Statutes of the United States provides that—

Every person who promises, offers, gives, or causes or procures to be promised or given any money or other thing of value, or makes or tenders any contract, etc., to any member of either house of Congress, with intent to influence his vote or decision, etc., shall be fined not more than three times the amount given, or promised, etc., and shall be moreover imprisoned not more than three years,

The penal code of California, section 85, provides that—

Every person who gives or offers to give a bribe to any member of the legislature, etc., to influence a member, etc., is punishable by imprisonment in the State prison not less than three nor more than ten years.

In addition to the above, sections 504, 560, and 563, relating to corporations, make many of the matters sought to be inquired into felonies and misdemeanors. I will go no further into these matters, believing as I do that the rule will be discharged; and I hope that your honors may not only discharge the rule, but that you will justify Senator Stanford for declining to answer the questions propounded to him, as Lord Ellenborough did the witness in *Milman vs. Tucker* (2 Peak, N. P. C. 222-223), when he told the witness, on his being asked by Erskine whether he had not been convicted of forging coalmeasures' certificates, that he need not answer; and told the jury that the witness (having availed himself of the privilege) was not thereby at all discredited; and said he, himself, should, had he been asked such a question, have refused to give an answer, for the sake of the justice of the country, and to prevent such an examination. (2 Phillips on Evidence, Note, p. 948.)

I append the argument made at the bar to these points, and I respectfully submit that the rule to show cause should be discharged.

L. D. McKISICK,
Of Counsel for Respondent.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT AND DISTRICT OF CALIFORNIA.

IN THE MATTER OF THE

Application of the United States Pacific Railway Commission for an order to compel Leland Stanford to make answer to certain questions to him by it.

WEDNESDAY, August 17, 1887.—2 o'clock p. m.

ARGUMENT OF L. D. McKISICK.

If your honors please, my colleague presented the respondent's answer to show cause so fully this morning, that I shall not trouble your honors very long in adding just a few words to what he said, and entirely in consonance with what he did say, but I will present some views which I have in a rather different aspect.

Now, as to the power of Congress to appoint a commission to investigate matters in which Congress may feel that it now has or will hereafter have an interest, in view of what should be the policy of the Government in its legislation, I entirely agree with all that has been said. It is unlimited. But when it comes to the exercise of the power of that commission, whether it be joint by the Senate and the House, or whether it be separate by the Senate or by the House, if there should arise a question which involves the rights of a citizen we have a right to inquire into the questions involved, both in respect to the power of Congress to appoint the commission as to the particular subject, and also with regard to the manner in which the commission shall exercise the powers which have been conferred upon it.

This proceeding before your honors—and I do not say before this court purposely, because I will argue that it is not a proceeding in

court all—but this proceeding before your honors arose in this way: The United States district attorney comes here and presents to your honors, or to one of your honors, an application which is styled—and I particularly call the attention of the court to this, because I shall endeavor to show that there is something in it—it is in the matter of the application of the Pacific Railway Commission. Application for an order to require Leland Stanford to make answer to certain questions put to him by it, and it is the petition of Robert E. Pattison, E. Ellery Anderson, and David T. Littler, commissioners appointed under an act of Congress entitled “an act authorizing the investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes, approved March 3, 1887.” Now, that is, so far as we have in these proceedings, the title of this matter. This Railroad Commission, this Pacific Railway Commission, as it styles itself, and very properly too, is nothing more than an agent of the political department of the Government. It is an agent appointed by the Congress to make certain inquiries. It has no judicial functions whatever; otherwise, it would not be here before your honors. But it is clothed with certain powers, and certain duties have been imposed upon it; and I have no doubt it is trying faithfully to execute the powers and to perform those duties. When it has executed the powers which Congress has conferred upon it, its duty will then be to report to the President of the United States the results of its examinations and inquiries, and through the President of the United States to Congress; because the act makes it the duty of the President to submit to the Congress the report of the Commissioners, and the evidence, with such suggestions as he may deem proper. That is what this Commission is—a political agent of the Government, clothed with these powers, and charged with these duties. It comes here to the city of San Francisco, to the office of the Central Pacific Railroad Company, which is one of the roads which received bonded aid, as we may call it, from the Government, limited by the act to an investigation into the affairs of those railroad corporations which have received aid in bonds from the Government. That is the extent of its power. Whether it has gone beyond that or not is not now for us to discuss; but while engaged in the performance of its duties (and we will assume, and it is proper and right to assume for the Commissioners, and proper and right to assume for the Congress, in the first place, that the Congress intends no wrong to anybody; and in the second place, that the Commissioners intend no wrong to anybody, but they are attempting to discharge their duties), and that act says that in performance of their duties they shall have power to call before them persons and examine those persons as witnesses; they shall have power to send for papers and look into the various matters that are disclosed by those papers. If it shall become necessary, they may invoke the aid of any of the courts of the United States where they may be then in session, to have subpoenas to call witnesses before them; or if a witness while being examined should decline to answer questions, or in the language of the act, should become contumacious, which as lawyers we understand, then they may invoke the aid of the court to compel the witness to answer the questions. It is because this petition alleges that the respondent here became contumacious, in the technical sense, and declined to answer certain questions, that they come here now, and invoke the aid of the court—I will say of the courts of the United States—to compel that witness to answer those questions. Now, I say that at the threshold lies a very grave question, and I want to call your honors’ attention

to the fact that there is no controversy between the United States and the Central Pacific Railroad Company at all. The act of Congress of the 3d of March, 1887, does not pretend that there is any controversy between the United States and the Central Pacific Railroad Company. There is no party here, either in law or in equity. There is no suit here, either at law or in equity, between the United States and the Central Pacific Railroad Company. There is no controversy here between the United States and the Central Pacific Railroad Company. But these gentlemen who have been appointed on this Commission, in the discharge of their duty, have found it necessary to appeal to that particular clause of the act of Congress which authorizes them to invoke the aid of the court.

Now, when they come into this court, they must come into it under the Constitution and the laws of the United States, because no man can come here and invoke the aid of the circuit court, or the district court of the United States, unless he can show authority from the Constitution, and under the Constitution, and an act of Congress, which authorizes him to do so.

Now, the question is, "Is this a judicial proceeding?" The question is "Has the court any jurisdiction under the Constitution of the United States, or the acts of Congress, to lend its aid to this Commission to compel this respondent to answer the question?" I say, if the honorable court please, or if your honors please, rather, that nothing of the kind can be found either in the Constitution of the United States, or in any statute of Congress passed in pursuance of the Constitution of the United States; and I say that, if the honorable court please, upon my reading of the Constitution. And while I am not going to detain your honors very long, I want, simply because it is in the line of duty, as I think, to state propositions that are very familiar to your honors.

The first section of the third article of the Constitution of the United States provides that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The Constitution does not define judicial power, nor does it define courts; but this Constitution was framed by gentlemen who were perfectly familiar with the common law; it was framed under the common law, as we might say; because we have in it these sections that the right of trial in criminal cases shall be by jury, and in civil cases, where the matter in controversy is more than \$20, by jury. The Constitution does not define what a jury is, but we all know that a jury at common law and the jury that is meant by this Constitution consists of twelve men; and we know what the judicial power means, although the Constitution does not define it, but it has been defined by the Supreme Court of the United States. The Constitution defines the limits of the judicial power, but Congress prescribes how much of it is to be exercised by the Federal courts. Judicial power means that power with which courts are clothed for the purpose of the trial and determination of causes; the power conferred to render a judgment or decree; that is judicial power. Now, the second section of the third article provides how far this judicial power shall extend. And in that section it is provided:

The judicial power shall extend to all cases in law and equity arising under the Constitution and laws of the United States, and treaties made, or which shall be made, under their direction; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction.

The Constitution does not define the word "case," but we understand what that means. It is a suit either at law or in equity, where

there are parties plaintiff, complainant; parties defendant, respondent. There must be a case under these clauses of the second section of the third article, to which the jurisdiction extends. Furthermore, it extends to controversies to which the United States shall be a party. I call the attention of your honors to the fact that the United States is no party here. It extends to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign citizens or subjects. Now this judicial power, which the Constitution says shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish, extends to these persons and to these subject matters no further, and Congress can not extend it any further, if your honors please; but Congress may say how much of it shall be exercised, and that is the great distinction. The Congress may say that the circuit courts of the United States shall exercise so much of this power as it chooses it may exercise; and only on the 3d of March, 1887, if your honors please, the jurisdiction of the circuit court was very much restricted. Congress had a right to do that, because the decisions from the time that the Constitution was ordained and established have been that the Congress may confer as much of this jurisdiction which is vested in the courts, or which may be vested in the courts, or to which the judicial power may extend, as it please; but the courts have as continuously and as frequently said, whenever it became necessary for them to say so, that Congress can not go beyond what the Constitution has said. Now I say, if the honorable court please, or if your honors please, that before you can exercise any jurisdiction at all, there must be a suit at law or in equity, or a controversy. We have nothing of the kind here, and I believe you will agree with us when your honors come to think of this, with the authorities before you which my friend has cited—and the cases run all through them—commencing with Hayburn's case. That was the old pension case, where the judges were authorized by the act of Congress to inquire into the various applications laid before them by persons who claimed that they were entitled to pensions. That case is so familiar to the court that I won't refer to it; but the judges all differed; that is, they did not agree as to whether it was a judicial power or whether they were to act as commissioners, and some of them acted as commissioners, and some of them allowed Todd's pension at New Haven, Conn., and the pension was paid to him; but the question still remained unsettled by the conflicting opinions of the various judges. The United States after having paid that pension sued to recover it back, and the question was whether or not the act under which these judicial officers had passed upon it was constitutional. If it was, then the pension was rightly paid. If not, the pension was wrongfully paid, and the United States Government had the right to recover it back. The court held in the Todd case that the act conferring these powers upon the judges of the circuit and district courts of the United States was unconstitutional, and that the judicial power was improperly exercised in allowing the pension, and the Government recovered a verdict against Todd.

Mr. Justice FIELD. What volume is that reported in?

Mr. McKISICK. That is reported in the note to the case of *Ferriera*, in 13th How. The case itself was never reported, but the Chief Justice looked it up. It is in the note to the case in 13th How.

Mr. Justice FIELD. He refers to that in his opinion.

Mr. McKISICK. Yes, he refers to it in his opinion, and also refers to the

original case, and tells you where you can find the opinion of all the judges upon that question.

Mr. Justice FIELD. Does Judge Taney, in that Hayburn case, lay down the doctrine that no judicial power can be exercised except in a case?

Mr. McKISICK. No, sir; because it was not necessary for him to decide that. He states this: He refers to all these cases, and says that this judicial power which is conferred by the Constitution upon the courts must be exercised in conformity with the Constitution, and not in conformity with acts of Congress, if they go beyond the Constitution.

Mr. Justice FIELD. And this judicial power can not be exercised except in cases?

Mr. McKISICK. There must be a case or a controversy. Just why the Constitution changed its phraseology from "cases at law and in equity" to "controversies" the commentators have always been in doubt; but there are certainly many controversies that are special proceedings, and probably the framers of the Constitution had something of that idea in their minds when they changed the phraseology from "cases" to "controversies;" but the Supreme Court has always decided that they are almost interchangeable.

Mr. Justice FIELD. That would lead, practically, to this: That Congress could not issue any commission and compel testimony to be given, because it could not invest the commission with authority to enforce obedience to a subpoena, and could not invest the courts with authority. Is that your point?

Mr. McKISICK. That is my point, sir. If Congress wants a commission to exercise judicial functions, it may say, "Be it enacted, and there hereby is created a Pacific railway court;" because I don't believe the Constitution limits Congress in determining what they shall call a court.

Judge HOFFMAN. They must have a case or a controversy before them, according to your argument, or they could not investigate.

Mr. McKISICK. That is exactly my argument. That is to say, the commission may investigate any subject, but when that commission comes into this court it must come here with a case, or it must come here with a controversy; and unless it does come here with a case or with a controversy, the judicial power which is vested in the courts of the United States does not extend to that matter; because here is the limitation: It shall extend only to cases at law, or in equity, or to controversies between the enumerated parties. That is the point that I make, and that is the reason that I call the attention of your honors to the fact that there is no case here; there is no controversy here. There is no controversy in the act. The act itself makes no controversy with the Central or the Union Pacific, or any other railroad, but it simply appoints this Commission to investigate and inquire into facts, and report them to the President, in order that they may be laid before Congress. Therefore I say that the argument of my friend is entirely correct and proper when he says that this Commission, while it may investigate to the extent that the debtor is willing to allow it to investigate, and probably some distance beyond that, under the provisions of the act of Congress, or the various acts of Congress rather (because as to some of them the railroad corporation accepted the terms and thereby came under the act itself), when that Commission comes into this court, or into any court, it must come here under the provisions of the Constitution. I understand, if your honors please, that the rule is perfectly well settled, not only in the Supreme Court

of the United States, but in the district and in the circuit courts, that whenever a question comes into the court, the jurisdiction of the court must affirmatively appear. While it is true that, under the Constitution and under the acts of Congress, the circuit courts and district courts are not courts of limited jurisdiction in the common-law sense, yet under the peculiar phraseology of the Constitution, which vests this power in one Supreme Court and in the inferior courts, and then says to what subjects and what persons it shall stand, that the courts always stop at the threshold, to look to the question of jurisdiction, and if they find—no matter whether it is made or not by the parties—if the court finds that it is without jurisdiction under the Constitution, or if an act of Congress has attempted to confer more jurisdiction upon it than the Constitution gave it, they will stop *sua sponte* and proceed no further. It is true that in some instances, where it was a question of citizenship, the parties—although the record did not affirmatively show it—the parties consented in open court that the facts of citizenship necessary to give the court jurisdiction did exist. But suppose, if the honorable court please, just to illustrate, that an act of Congress were passed, authorizing a citizen of a State to sue another citizen of the same State upon a money demand, where the amount in controversy was \$100,000, and threupon Lloyd Tevis sued James C. Flood—they are both citizens of California—and alleged that under that act of Congress he had come into the circuit court to prosecute his money demand; not a question of grants from different States, but a money demand against James C. Flood, under that act of Congress, for \$100,000. Your honors would not entertain that jurisdiction a moment, because you would say that Congress had no power under the Constitution to extend the jurisdiction of the circuit court to controversies of that character between citizens of the same State.

Now these are broad illustrations, but I want to impress upon the court that my opinion is that there is no case here, either at law or in equity, nor any controversy between the United States or the Pacific Railway Commission and the Central Pacific Railroad Company. That is not the case here at all. This Commission has no controversy with the Central Pacific Railroad Company. They come here and tell you that a witness whom they desire to examine in making their investigation into the affairs of the Central Pacific Railroad Company is contumacious, and they invoke your aid to make him answer questions which they have propounded to him, without any case at all—without any controversy with the Central Pacific Railroad Company. I do not propose to go any further into that proposition. I think I have made myself understood as to that.

Now as to the next. I don't think that I can add any thing at all to what has been said by my friend. He has put it so strong and upon such a broad principle, that I think it certainly lodged in your honors' minds that the character of the questions propounded to the witness, whom this petition alleges to be contumacious, are such questions as no court of justice, if it were a case or if it were a controversy, would compel him to answer. Without a case and without a controversy, of course I come back to my first proposition. But with a case and with a controversy, the questions propounded to this witness are of such a character that no court of justice would compel him to answer.

We have some principles in our code of civil procedure relating to witnesses that are nothing in the world but rules of the common law—general rules of law applicable to all the courts. I mean they are extracted from the common law.

Your honors will remember that this Commission is clothed with the power of making these investigations; it makes them itself; it examines the witnesses; the witness has nobody there, no judge, no one to protect him; but just such questions as they may believe—and I don't want to do them an injustice—but just such questions as they may believe they are authorized by the act of Congress to ask—and the act of Congress is certainly very sweeping—they ask the witness. The witness can not appeal to a judge. There is no judge there to protect him. He must answer, or he is contumacious, in the opinion of the Commissioners, because they believe that under the act of Congress they have the right to compel the witness to answer. I don't say that they have the right to compel him, but they have a right to insist upon his answer, and if he does not answer, then they believe they have a right to invoke the aid of your honors. Now, that is contrary to all principles of law. A witness is entitled to be protected—I don't care in what tribunal he is—he is entitled to be protected. From what? If your honors will permit me I will read to you sections 2065 and 2066 of the Code of Civil Procedure of the State of California. They are only, as I say, rules of the common law, and rules of all courts of justice; rules of the courts of the United States, as well as of the courts of California. "A witness must answer questions legal and pertinent to the matter in issue." Well now, there is no issue. There is no issue at all between the United States and the Central Pacific Railroad Company. There is no issue between the Pacific Railway Commission and the Central Pacific Railroad Company. There is no such thing as an issue to be found in the act of Congress. There is no act which they have done, or which they can do, which makes an issue which this law means, and that is, where there is a party plaintiff, a party defendant; a party complainant or a party respondent, as it may be, in law or in equity.

A witness must answer questions legal and pertinent to the matters in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

2066. It is the right of a witness to be protected from irrelevant, improper, or insulting questions.

Who protects him in that right before this Commission, if your honors please? Here is a right given to a witness by the law—and I say that this law is just as applicable in the courts of the United States as it is in the courts of California—to be protected from these things, and yet there is nobody who can enforce that right—nobody there. "And from harsh or insulting demeanor." I will read the section:

It is the right of a witness to be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

I say that these rules, although they are formulated in the Code of Civil Procedure of the State of California, are as old as Lord Ellenborough's time. He did protect his witnesses.

Judge HOFFMAN. Mr. McKisick, am I to understand you as denying to the legislature of this State the right to organize a commission to investigate a subject and to compel witnesses to testify? Because, if it is a mere investigation there is no issue, there is no suit at law, there is no controversy; it is merely an inquiry. There is no charge against anybody or suit against anybody. Have they no right to compel a witness to answer?

Mr. McKISICK. They may have a right, but they have no right to invoke the judicial power to aid them; but in a case of that kind it would be the duty of the committee to report back to the legislature, and then for the legislature to act—and the legislature has quasi judicial powers, and always has had to punish for a breach of privilege. Parliament had them, and the legislatures of the State and Congress have them; and if the committee had been properly organized and sent out to investigate, and a witness is brought before it, and the witness is contumacious, it is the duty of the committee to go back to its author, the legislature, but not to come into a court of justice.

Judge HOFFMAN. The Supreme Court negatived the idea of judicial power such as Parliament exercises being confided to Congress at all. That is in the case of a suit against the Sergeant-at-Arms.

Mr. McKISICK. I don't understand, if the honorable court please, that the decision has gone quite that far. I think that there are certain powers that the legislature or Congress may exercise; but I won't undertake to say, if your honors please, what the legislature ought to do, or how far it could go, if the committee reported back to the legislature that a witness was contumacious. But I say that it has no right to come into a court of justice—that is, I say that the Constitution does not authorize it to come into a court of justice, and invoke the aid of a court to compel a witness to answer before a committee.

Now, as I have said, the witness must be protected. Suppose, if your honors please, that you should differ with me—and I merely state this for illustration—and make an order compelling this witness to appear before the Commission to answer the question, and he should go there, and the question should be put to him—I won't say what this Commission would do—but suppose the question should be put to him in a harsh, insulting manner, and he were to say, "I don't want to answer that question; I want to be protected." Would either one of your honors go there to protect him? Are you a part of that Commission? I beg pardon for putting my argument that way, but that is what it comes to. Is the circuit court of the United States, or the district court of the United States a part of this Pacific Railway Commission, or its servant? I say, No. I say it is a tribunal under the Constitution and laws of the United States, and the witness could not insist upon your honors going there to protect him from the wrongs mentioned in one provision of this code, or give him the rights mentioned in another. And he goes there and he declines to answer because of the manner, or has answered as he did in this very case, when your honors look into this petition, with the exhibits as to this \$171,000 voucher. He answered as fully as any court would have ever compelled him to answer as to the first proposition, what became of the money. He said, "I can't remember; the transaction is so old; it is made up of so many different items. I was once familiar with it, but they have passed out of my mind and I can't tell you." And I say, and I say it with a great deal of confidence, that if either one of your honors had been presiding in a court of justice in the trial of a case or a controversy, and the witness had answered in that way, you would not have compelled him to answer it any further.

Mr. CAREY. You do not suggest that in your answer.

Mr. McKISICK. Why should we, when you put it in your petition?

Mr. CAREY. You didn't suggest to the court that you have sufficiently answered.

Mr. McKISICK. The court will see that we have sufficiently answered by looking at your petition. Senator Stanford could have met this application, in my opinion, by a motion to quash, or a demurrer; but from

the beginning of these investigations down to the 10th of August, 1887, he has shown every disposition that an honorable gentleman could show to comply with the law, and to be courteous and polite to these Commissioners; but when they press him on these questions beyond where any witness ought to be pressed, then he appeals to the Constitution and the laws, and declines to answer. That is the position that he is occupying, and when he comes here to respond——

Mr. Justice FIELD (interrupting). Does he put his objection to answer on the ground that he cannot recollect the matter?

Mr. McKISICK. If the court please, he did not in his answer, but the petition itself exhibits the answer that he made to a question to this very voucher, and of course we did not deem it necessary for him to answer any further.

Mr. Justice FIELD. I am speaking of before the Commission.

Mr. McKISICK. Oh yes. he puts it very fully, and he gives the reasons and he gives them *in extenso*, and with a great deal of particularity. Any one who reads that answer and reads the circumstances under which that voucher was made up, will understand perfectly well that he was giving the very best answer to that Commission that he could give in a court of justice.

Judge HOFFMAN. As I understand, he is asked, was any portion of this \$171,000 paid for the purpose of influencing legislation? He says, "I decline to answer." He don't say, "I don't know."

Mr. McKISICK. That is a separate question.

Judge HOFFMAN. That is the question we are dealing with.

Mr. McKISICK. We are dealing with two questions. He had said he did not know what items made up that voucher. Then the question was put to him, if any part of that money had been used to influence legislation. Under the advice of counsel he stopped there. Now, if the honorable court please, or if your honors please—whichever you may be—there is something that you will see, when you come to look at these questions and the answers, that will convey to your minds the impression that the question was not asked of Senator Stanford if any of this money had been used to influence legislation legitimately. We all know that thousands and hundreds of thousands of dollars may be used legitimately to influence legislation. But these questions are framed, and the whole tenor of them shows that the purpose and scope of them was to ascertain from the witness whether any of the money had been used to influence legislation improperly. When I say "improperly," I mean either under the Marshall case, or if there was bribery. I mean under the Marshall case where there was pay, or under the Trist case where there were certain improper statements made by the Messrs. Childs to certain members of Congress. The whole tenor and scope of these questions go to that: "Have you used any money improperly, illegally, and wrongfully to influence legislation?"

Mr. CAREY. That is an inference you draw from the questions. The questions are not framed in that way.

Mr. McKISICK. You will see that that is the whole tenor and scope of the questions. The exhibits to this petition show that, if I read them correctly. Congress did not, in my opinion, mean anything of the kind, because Congress certainly knew very well that money might be spent to influence legislation. Congress might have wanted to know whether the moneys thus spent had influenced legislation in the interests of the company, or had influenced legislation against their interests. But that is not the purpose of this Commission in asking these questions, as I think your honors will very

readily see; but the purpose was to fasten some stigma upon the witness. The purpose was to fasten some stigma upon certain persons whose names were mentioned on some of those vouchers. It is not dark at all. It is clear as noonday sun that that is the object and purpose of these questions, from the manner in which they were shaped and framed; and I say that the witness did perfectly right in declining to answer them, and I do not believe that your honors will make an order requiring him to answer them. I don't believe, in the first place, that the circuit court, or the district court, or that your honors as judges, have any jurisdiction whatever over this matter. I do believe that you will agree with me when you come to read the questions propounded to the witness, and the manner in which they were propounded to him, and there are two classes of them, as I say. To one class he answers just as fully as he would have been compelled to answer in any court of justice. The judge would have said, "The witness has gone far enough; he has told you all he knows." The other is, where it is apparent and transparent that the object and purpose was——

Mr. Justice FIELD. Did it involve the first question when he said he could not state what made up the items; do you take that in connection?

Mr. McKISICK. They asked him the general question, what his recollection about the voucher was. I won't give you the language of the question, but it is there. There was nothing wrong in that question at all.

Mr. Justice FIELD. His answer was what?

Mr. McKISICK. His answer went very fully into an explanation of the voucher.

Mr. Justice FIELD. After that, notwithstanding he said he didn't know, they asked him whether any of that money had been used to influence legislation?

Mr. McKISICK. Yes, sir.

Mr. Justice FIELD. Your argument is that the second ruling involves the first?

Mr. McKISICK. The second ruling involved the first. And then, besides, the tone and manner of the question shows that they were not satisfied with his answer, and they wanted to show by him that some of the money which he had expended in that voucher, and in others, included sums of money that had been paid improperly and illegally to influence legislation; and I am perfectly willing to rest that branch of the case upon your honors' reading of the questions and his answers.

Now, one other question that I think is very proper to state, and I will only state it without argument. This particular voucher, or these particular vouchers, to be sure, come from the archives of the Central Pacific Railroad Company, but they have the name of this witness upon them; and as to that, of course, he is being examined about a paper or about affairs of which he himself was a party in making the paper. Now, I say that under the Boyd case, and under all of the cases under the Constitution, in fact, that when they came to that paper and asked him improper questions, or asked him questions that might have tended to degrade his character or to criminate him, he had a right to stop. And, furthermore, if your honors please, this act of Congress authorizes these Commissioners to report whether or not any dividends have been improperly declared; whether or not any of the net proceeds or the net earnings of the company had been improperly diverted. In other words, these questions would tend, if answered by the witness in the way which the Commission expected him or wanted him to answer, evi-

dently, they would tend to subject him to certain penalties and forfeitures. I call your attention to the case of the *United States vs. The Saline Bank of Virginia*—I believe my friend Mr. Bergin did not refer to that; it is in 1st Peters, and at page 100—the United States became a creditor of that bank. Under an act of the legislature of Virginia, which authorized certain private banking institutions to be organized in that State, certain formalities were required to be complied with by the officers or persons organizing that bank. If they were not complied with, the officers and directors became personally responsible, and liable not only for the debts of the bank but subject to certain penalties imposed by the act itself. The bank having become insolvent, and not being able to pay the United States when it demanded the debt which it owed, the United States filed a bill in equity, under the provision of an act of the Virginia legislature which authorized a bill in equity to be filed against the officers of the bank to make them personally liable for the debt of the bank. That act of the legislature of Virginia required the officers and directors to answer questions, but said that “no answer given to a bill in equity in this proceeding shall be used in any criminal proceeding against the officers.” The cashier was one of the officers—his name was Campbell. When he came to answer with the others they pleaded that they could not answer that without subjecting themselves to penalties and forfeitures under the laws of Virginia. That plea was set down for argument, and the judge of the district court, having heard argument on that plea, sustained it, and thereupon the United States appealed—it was an equity case—to the Supreme Court of the United States, and the pleas are set out in the report. The facts are all stated and the pleas set out, and Chief Justice Marshall affirmed the judgment of the district court in about two paragraphs, saying: “It is perfectly evident, under the act of the legislature of Virginia, that an answer to this bill would subject these parties to penalties, and therefore they are not required to answer.” I say that whether you take this upon the ground that these questions tend to criminate or degrade the witness, or whether they tend to subject him to penalties, or to forfeitures, or to suits to recover back net earnings, or whatever the phrase is in the act, that he is not compelled to answer that question at all.

Mr. Justice FIELD. He didn't take that ground.

Mr. CAREY. No, sir; he didn't take that ground.

Mr. McKISICK. He does not take this ground, if the honorable court please. The answer has not been read to you. When you come to the latter clauses of the answer you will see that he stands upon his legal right under the Constitution of the United States, and that is sufficient. The Constitution of the United States protects him, and he is not bound to plead specially which one of the sections or which one of the provisions of the Constitution does protect him; but that was the ground upon which he declined, and he would have declined, of course, upon no other, because under the Constitution of the United States he was not bound to answer.

Mr. Justice FIELD. Should he not have taken that ground when the question was asked?

Mr. McKISICK. I think not. I do not think the law requires it; in fact, I am very sure that the witness may say, “I decline to answer,” and then he may give his reasons for it, if he is asked for. “It will tend to criminate me; it will tend to degrade me.” But the reasons here were not asked for.

Judge HOFFMAN. Must he not, in any court of justice, put his privilege upon that ground, and say, "Counsel advises me not to answer?"

Mr. McKISICK. In the first place he says, "I decline to answer." Then the party examining has a right to say, "Upon what ground do you decline?" But suppose the party does not say that; then when he is called upon to show cause why he did not answer, he, of course, may give a reason for it.

OPINION OF COURT.

The Courts of the United States can not be made mere aids to a commission of inquiry created by Congress.

IN THE MATTER OF THE

Application of the Pacific Railway Commission for an order upon a witness before it to answer certain interrogatories propounded to him.

OPINIONS OF MR. JUSTICE FIELD, AND JUDGES SAWYER AND SABIN,
DELIVERED IN THE U. S. CIRCUIT COURT AT SAN FRANCISCO,
AUGUST 29, 1887.

[T. I. Bergin, L. D. McKisick, for Leland Stanford. John T. Carey, U. S. District Attorney, Henry C. McPike, Asst. U. S. Dist. Attorney, for the Railway Commission.]

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA.

1. The Pacific Railway Commission is not a judicial body and possesses no judicial powers under the act of Congress of March 3, 1887, creating it, and can determine no rights of the Government or of the corporations whose affairs it is appointed to investigate.
2. Congress can not compel the production of private books and papers of citizens for its inspection, except in the course of judicial proceedings, or in suits instituted for that purpose, and then only upon averments that its rights in some way depend upon evidence therein contained.
3. The courts are open to the United States as to private parties to secure protection for their legal rights and interests, by regular proceedings.
4. Congress can not empower a commission to investigate the private affairs, books, and papers of the officers and employes of corporations indebted to the Government as to their relations to other companies with which such corporations have had dealings, except so far as such officers and employes are willing to submit the same for inspection; and the investigation of the Pacific Railway Commission into the affairs of officers and employes of the Pacific Railway Companies under the act of March 3, 1887, is limited to that extent.
5. The United States have no interest in expenditures of the Central Pacific Railroad Company under vouchers which have not been charged against the Government in the accounts between them; and the Pacific Railway Commission under the act of Congress of March 3, 1887, has no power to investigate such expenditures against the will of the company and its officers.
6. The judicial power of the United States is limited to "cases" and "controversies" enumerated in Article III, Section 1, of the Constitution as modified by the eleventh amendment, and to petitions on habeas corpus and can not be extended by Congress; and by such "cases" and "controversies" are meant the claims of litigants brought for determination by regular judicial proceedings established by law or custom.
7. The judicial department is independent of the legislative, in the Federal Government, and Congress can not make the courts its instruments in conducting mere legislative investigations.

8. The power of United States courts to authorize the taking of depositions on letters rogatory from courts of foreign jurisdictions exists by international comity; but no comity of any kind can be invoked by a mere investigating committee appointed by Congress.
9. The Central Pacific Railroad Company is a State corporation not subject to Federal control, any further than a natural person similarly situated would be. Per Sawyer, J.
10. The Central Pacific Railroad Company is absolute owner of the lands and bonds granted to it by the Government, having complied with the act making the grant, subject to the lien of the Government to secure its advances, in the same way and to the same extent as a natural person in like situation. Per Sawyer, J.
11. The relation of creditor and debtor exists between the United States and the Central Pacific Railroad Company, under the act granting aid to the latter, with like force and effect as if both were natural persons, the relation being private and having nothing to do with the power of the Government as sovereign. Per Sawyer, J.
12. The United States, as creditor, can not institute a compulsory investigation into the private affairs of the Central Pacific Railroad Company, or require it to exhibit its books and papers for inspection in any other way, or to any greater extent, than would be lawful in the case of private creditors and debtors. Per Sawyer, J.
13. The United States, as Creditor, have the same remedy as a private creditor, and no other, to compel payment of any moneys due it from the Central Pacific Railroad Company, as their debtor, or to prevent the latter from wasting its assets before the debt matures, and that remedy, if any, must be by a regular judicial proceeding in due course of law, and Congress has no power to institute a roving, legislative inquisition into the affairs of the company to ascertain what it has done or is doing with its money. Per Sawyer, J.

STATEMENT OF FACTS.

This is an application of the Pacific Railway Commission, created under the act of Congress of March 3, 1887, "Authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes," for an order requiring a witness before it to answer certain interrogatories propounded to him. That act authorizes the President to appoint three commissioners to examine the books, papers, and methods of all railroad companies which have received aid in bonds from the Government, and in terms invests them with power to make a searching investigation into the working and financial management, business, and affairs of the aided companies, and also to ascertain and report—

Whether any of the directors, officers, or employes of said companies, respectively, have been or are now directly or indirectly interested, and to what amount or extent, in any other railroad, steamship, telegraph, express, mining, construction, or other business company or corporation, and with which any agreements, undertakings, or leases have been made or entered into; what amounts of money or credit have been loaned by any of said companies to any person or corporation; what amounts of money or credit have been or are now borrowed by any of said companies, giving names of lenders and the purposes for which said sums have been or are now required; what amounts of money or other valuable consideration, such as stocks, bonds, passes, and so forth, have been expended or paid out by said companies, whether for lawful or unlawful purposes, but for which sufficient and detailed vouchers have not been given or filed with the records of said company; and further to inquire and report whether said companies, or either of them, or their officers or agents, have paid any money or other valuable consideration, or done any other act or thing for the purpose of influencing legislation.

It is difficult to express in general terms the extent to which the Commissioners are required to go in their inquisition into the business and affairs of the aided companies; or the extent to which they may not go into other business and affairs of its directors, officers, and employes. The act itself must be read to form any conception of the all-pervading character of the scrutiny it exacts of them.

And it provides that the Commissioners, or either of them, shall have the power—

To require the attendance and testimony of witnesses and the production of all books, papers, contracts, agreements, and documents relating to the matter under investigation, and to administer oaths; and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses, and the production of books, papers, and documents.

And it declares that—

Any of the circuit or district courts of the United States within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring any such person to appear before said Commissioners, or either of them, as the case may be, and produce books and papers if so ordered, and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

And also that—

The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

In the discharge of the duties imposed upon them, the Commissioners have attended at San Francisco and called before them as a witness Leland Stanford, who is now and has been from its organization president of the Central Pacific Railroad Company, one of the companies which received aid in bonds from the Government; and on the 10th of August, whilst he was under examination respecting the affairs of that company, a number of vouchers purporting to represent the expenditure of moneys belonging to it were produced and verified. These vouchers, as stated by the Commissioners, represented the aggregate sum of \$733,725.68, which had been expended by Mr. Stanford between November 9, 1870, and December 21, 1880, and by him charged to the company, and by the company subsequently reimbursed to him. The persons to whom the moneys were paid and the objects to which they had been applied do not appear upon the face of the vouchers, except that the objects are stated to have been for "general expense account" or for "legal services," and except, also, that in a few instances the initials of persons to whom the money is purported to have been paid are given. One of the vouchers (No. 2,569½) represented the expenditure of \$171,781.89. It reads as follows:

C. P. R. R. Co., to Leland Stanford, Dr.

To cash paid on account of general expenses to December 31, 1875.....	\$37,365.50
To cash paid on account of general expenses to December 31, 1875.....	34,416.39
	171,781.89

This was indorsed, in addition to its number, amount, and a statement of its general character, as follows:

Allowed Feb. 7, 1876, by board of directors, folio 153.

I certify that the within account, amounting to \$171,781.89, is correct.

LELAND STANFORD.

When under examination Mr. Stanford was asked to explain in detail the character of the expenditures covered by this voucher. He replied that he had no recollection of its contents, but presumed it was made up of many items. He then proceeded to explain at great length the manner in which he did business for the company in negotiating loans and incurring expenditures, which was briefly this: The loans were generally negotiated in San Francisco, and the payment of expenses incurred by him was frequently made there, though for many years the office of the company was at Sacramento. His payments were usually

in checks drawn in his own name. The check-books, with loose memoranda kept by him, were handed, from time to time, to some one connected with the office, by whom a general voucher was made up embracing the several expenditures incurred, and the voucher was then presented by the witness to the directors of the company and by them approved. The witness kept no accounts of his several expenditures, except loose memoranda and his check-books, from which the vouchers were made up; and he supposed the voucher in question was thus made up. He could not, at that date, state the items which made up the several accounts, but he had no doubt that he explained the matter to the company when the voucher was presented. To the question, "What explanation did you give the company?" the witness answered as follows:

Well, as I do not remember the items of it, I cannot remember, of course, what explanation I may have given to the company. I don't think I went into details of these things to the company, further than to say I found it necessary to expend for the general interest of the company so much; and I do not think that they ever questioned me particularly as to the wisdom of the expenditure.

The Commission then asked the witness this question:

Was any part of the \$171,000 (the sum named in this bill that I have handed to you and that you have) paid for the purpose of influencing legislation?

The counsel present acting for the railroad company objected to the question, for the reason that the witness had said that he did not remember what constituted the items composing the voucher; and said that upon that point (of influencing legislation) any question the Commission has asked, or might be disposed to ask, the witness would be advised not to answer, upon the ground that the company is willing to account to the Government for its proportion of any voucher that is produced, or of any entry upon the books of the company that is unexplained, and therefore it will not make any difference what is done with the money—whether it was thrown into the sea or wasted in any manner or form. The chairman of the Commission repeated the question in a modified form, as follows:

Was any part of the sum named in the voucher submitted to you paid to any agent or individual for the purpose of influencing legislation?

To this the witness answered as follows:

I told you I did not know anything about this, but then I shall act upon the advice of my counsel. I don't suppose it can make any possible difference as long as we account for the money. If the Government is not satisfied with the vouchers which we present, whether the money was expended or wasted or anything of the kind, it can make no possible difference, because if it went into the sea—if I had used this money improperly or thrown it away, I might be accountable to the stockholders for my trust, but the Government can not have any more than the money, and the company is willing to account for that if you are not satisfied with the action.

The witness, therefore, under advice of counsel, declined to give any further answer.

The chairman also asked this question:

Are you able to state to the Commission that any of the money was paid for illegitimate or corrupt purposes, that is, to corrupt the legislature of the State of California or any other State legislature, or the Congress of the United States?

And to which the witness answered as follows:

I have told you what I know, that I do not remember about that account; but I can say this, that I never corrupted a member of the legislature in my life, and I do not know that any of my agents ever did. So far as Congress is concerned, I saw a statement that the board of directors allowed my account for expenditures made in Washington or in various places. I do not know that I ever had any occasion to pay out any money at Washington except for my own private expenses.

The witness, upon further examination, testified that his check-books in which he drew his checks for the expenditures were destroyed; that it had always been his habit about once a year to have a "clean up," and when he wanted to go away he would overhaul his papers, and what he did not want he would destroy; that he had been to Europe three times within the last few years, and each time he had "cleaned up," leaving only such papers as, in case he might not return, he was willing that other people might see.

Notwithstanding the answer of the witness that he could not state the items of the voucher, and had no recollection of any of them, he was repeatedly asked substantially the same question, as though by its repetition a different answer might be obtained. The answer was, however, substantially the same in every instance. Other vouchers of a similar kind presented by the witness to the company were produced and verified, and with respect to them the witness said as follows:

I suggest to the Commission that there is not in all that class of bills to-day a single item that I positively remember. I could not tell the amount, nor when these bills were credited, excepting I went to the books. I cannot tell of a single item that went to make up the amounts. Let my answer as to this and to the other vouchers of that class be the same as I have made to the other (the first) voucher; and I will take that position generally.

Yet the Commissioners felt it their duty to ask specifically as to each voucher substantially the same question, at which some feeling appears to have been excited, as the following passage from the examination upon one of the vouchers discloses:

CHAIRMAN OF THE COMMISSION. Was any part of the sum expended through any agent or individual for the purpose of influencing legislation?

Answer. Not to my knowledge. I have told you already. I do not know the object of your examining me in this way. I have told you that I do not know anything about it; and I have told you that, I think, three or four times.

The CHAIRMAN. I want you to distinctly understand that I am going to ask you as to each of these vouchers, and I will put it on the record.

The WITNESS. And I want you to distinctly understand that I shall exercise my discretion about it.

The CHAIRMAN. That is your right; and it is my right and duty, sworn to, to ask you.

The WITNESS. It is your right and your duty to be a gentleman in asking questions.

The CHAIRMAN. Well, if I have not been, I will apologize.

The WITNESS. Well, I think you have occasion to apologize for asking such questions as that over and over again.

The CHAIRMAN. I will repeat my question, and you can decline just as you have done. I am going through all of these vouchers just in this way, so that there will be no mistake in the future.

The Commissioners now ask in their petition that the witness be summoned to show cause why he should not be required to answer the interrogatories whether any part of the sums named in the several vouchers was paid for the purpose of influencing legislation, which he has declined to do except in the manner stated.

Subsequently interrogatories were propounded to Mr. Stanford inquiring whether any portion of the moneys covered by the several vouchers produced following the first one was paid to certain parties, who were named, for the purpose of using the same in connection with measures pending in the legislature.

The witness declined to answer these interrogatories, and the Commissioners also ask in their petition that he be summoned to show cause why he should not be required to answer them.

It was also in evidence before the Commission that in December, 1875, the legislature of California was in session in the city of Sacramento.

and that it was the custom of the railroad company to be represented before its committees. The Commission thereupon inquired as follows:

The CHAIRMAN. How many representatives did you have there?

Answer. I used to generally go there and spend a good deal of time when there was any very hostile legislation going on or proposed. I was up there, and sometimes had one of our people and sometimes another; sometimes one lawyer and sometimes another.

The CHAIRMAN. Please name the lawyers who were in the habit of attending the legislature with you?

Answer. Unless it is really necessary, I do not want to go into the detail of any thing of that kind. We often employ agents in a confidential character, and it was not advisable that others should know that they were in our service. I do not want to answer unless I am compelled to answer. I want to give you all the information that is in our power by which you may understand under what obligations we are to the Government.

If we have wrongfully disposed of any of the assets of the Central Pacific Company that could possibly affect its relation with the Government I want you to know it, but where it is a matter merely between myself and my stockholders and directors, and it can not make any difference in our relations to the Government or what the Government may want to claim because of the lack of proper vouchers upon which to base their five or twenty-five per cent., I do not want to do it. I can not conceive that the questions you are asking me can possibly affect our account with the Government as long as we are willing to pay. If you are not satisfied with these vouchers, we say to you say so, and we will account for them as money on hand.

To the question subsequently repeated the witness declined to answer, and the Commissioners pray in their petition that the witness also be required, by order of the court, to show cause why he shall not be required to answer this interrogatory. Upon the filing of the petition, which was signed and verified by the oath of the Commissioners, an order was entered as prayed, that the witness show cause before the court, on a day designated, why he should not be required to appear before them and answer the interrogatories propounded.

The witness appeared in response to the order and filed his answer to the petition, in which he gives at some length the history of the construction of the road of the company and of the difficulties its projectors had to encounter, and mentions the aid in bonds and lands received from the Government, and the annual reports made to the Secretary of the Treasury of its condition and management. He states that since its organization, in June, 1861, he has been its president, and, after describing the manner of doing business, adds—

In this way I have taken part in transacting the business of the company for a period now extending over twenty-five years, and in point of value aggregating upwards of four hundred millions of dollars. As the business took place I was cognizant of it, but, owing to its multiplicity and the pressure of matters more important than mere detail, as well as the lapse of time, I am now no longer able to recall many of the matters with which I was personally so familiar.

He also states that by the decision of the Supreme Court the relation between the United States and the railroad company is that of creditor and debtor, and that the rights of both are those springing from that relation; that the examination made by the Commission has not only extended to the affairs of the Central Pacific Railroad Company, but has extended to a searching investigation of the affairs of all the consolidated and allied companies connected with that corporation; and that their affairs have been examined into not only by the experts of the Commission, but the Commissioners themselves, and their business relations have been exposed to the public and the prying curiosity of rival business competitors; and that the Commission insists upon investigating matters with which the Government has and can have no possible concern; that the disposition the company may have made of such portion of its assets or earnings as the Government has not and

never had any interest in is of this character; and yet the Commission insists upon answers to questions respecting such disposition which can have no possible effect upon the relations between the company and the Government, and can only tend to cast suspicion upon parties whose names may be mentioned; and as the subjects in respect to which these questions are propounded are of an exclusively private character, in no way affecting the interests of the Government, neither the company nor its officers feel called upon to answer.

The respondent also makes this extraordinary statement, that he is constrained to this course "as the gentlemen of the Commission have distinctly and repeatedly avowed, in the course of their examination, that they do not regard themselves bound in such examination by the ordinary rules of evidence; that they would receive hearsay and *ex parte* statements, surmises, suspicions, and all character of information that might be called to their attention;" and that during the course of his examination it had more than once transpired that he was examined upon charges made in pleadings and proceedings instituted against the company based upon suspicion and surmises, and in many cases without actual foundation; that questions had been propounded and a line of examination pursued manifestly prompted by disaffected and hostile parties, whose aim was more the pursuit of personal enmity of a private character than the interests of the public at large or the ends of justice; that to answer any of the objectionable questions would necessarily give rise to the implication that all persons whose names may be mentioned in the questions to which answers are declined are guilty of the acts of commission which is implied in the bare asking of the questions; that in his testimony he had said in substance, and now repeats it, that he never corrupted or attempted to corrupt any member of the legislature or any member of Congress or any public official, and never authorized any agent to do so; that all the claims covered by the vouchers referred to have received not only the approval of the board of directors of the Central Pacific Railroad Company, but likewise the approval of the stockholders of that company; that all parties who could in anywise legally or equitably be affected by the disbursements embraced in them were fully satisfied therewith and have ratified and approved of the same.

And in addition the respondent states that, in the conduct and management of a business of the magnitude of the Central Pacific Railroad Company and the various corporations consolidated and allied therewith, it is impossible not from time to time to have to do business involving disbursements which every dictate of business prudence will not admit of being made public; that arrangements of a private character, names of parties not publicly known, and the disclosures of which could only result in defeating the ends in view and exposing the persons so named to suspicion and obloquy would forbid making the same public, either upon the archives of the company or before a public commission; that this course of policy is not only sanctioned by ordinary experience in business life, but the Government of the United States and the government of the State of California, as well as the government of the city and county of San Francisco, severally, allow to their chief magistrates money the investment of which is committed exclusively to their judgment and discretion and for which detailed vouchers are never required.

The respondent further adds that the Commission deemed it its duty to propound questions involving criminality on his part and on the part of the persons whose names were mentioned in such questions, answers

to which, for the reasons stated, he has felt constrained to decline to make; that, acting not only on his own behalf but on behalf of those whose interests as stockholders of the Central Pacific Railroad Company are committed to his charge, he feels bound to decline to answer them unless by the court he is otherwise directed.

The purport of the answer of the respondent is that the Government has no legal interest in the matters in relation to which the interrogatories are propounded; that he has answered the interrogatories so far as it was in his power to do so, not having any recollection of the items for which the vouchers were made up, at this distant day from the transactions to which they relate, and that he is shielded by the Constitution from answering questions implying criminality in his conduct and calculated to cast aspersions upon others.

The district attorney of the United States, acting for the Commissioners, moves for a peremptory order upon the witness to compel him to answer interrogatories, notwithstanding his answer to the order to show cause.

Mr. Justice FIELD, after filing the above statement of facts, delivered the opinion of the court as follows:

The motion for a peremptory order upon the witness to answer the interrogatories propounded by the Railway Commission has been fully argued; and everything which could be said in its favor has been ably presented by the United States attorney, either in oral or printed arguments. In resisting the motion counsel of the respondent have not confined themselves to a discussion of the propriety and necessity of the interrogatories, and the sufficiency of the answers given by him, but they have assailed the validity of the act creating the Commission, so far as it authorizes an examination into the private affairs of the directors, officers, and employes of the Central Pacific Railroad Company, and confers the right to invoke the power of the Federal courts in aid of the general investigation directed.

Impressed with the gravity of the questions presented, we have given to them all the consideration in our power.

The Pacific Railway Commission, created under the act of Congress of March 3, 1887, is not a judicial body; it possesses no judicial powers; it can determine no rights of the Government or of the companies whose affairs it investigates. Those rights will remain the subject of judicial inquiry and determination as fully as though the Commission had never been created; and in such inquiry its report to the President of its action will not be even admissible as evidence of any of the matters investigated. It is a mere board of inquiry, directed to obtain information upon certain matters and report the result of its investigations to the President, who is to lay the same before Congress. In the progress of its investigations, and in the furtherance of them, it is in terms authorized to invoke the aid of the courts of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents. And the act provides that the circuit or district court of the United States within the jurisdiction of which the inquiry of the Commission is had, in case of contumacy or refusal of any person to obey a subpoena to him, may issue an order requiring such person to appear before the Commissioners and produce books and papers and give evidence touching the matters in question.

The investigation directed is to be distinguished from the inquiries

authorized upon taking the census. The Constitution provides for an enumeration of the inhabitants of the States at regular periods, in order to furnish a basis for the apportionment of Representatives, and in connection with the ascertainment of the number of inhabitants, the act of Congress provides for certain inquiries as to their age, birth, marriage, occupation, and respecting some other matters of general interest, and for a refusal of any one to answer them a small penalty is imposed (R. S., sec. 2171). There is no attempt in such inquiries to pry into the private affairs and papers of any one, nor are the courts called upon to enforce answers to them. Similar inquiries usually accompany the taking of a census of every country, and are not deemed to encroach upon the rights of the citizen.

And in addition to the inquiries usually accompanying the taking of the census, there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it can not compel the production of the private books and papers of the citizen for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence those books and papers contain.

Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right all other rights would lose half their value. The law provides for the compulsory production, in the progress of judicial proceedings or by direct suit for that purpose, of such documents as affect the interest of others, and also in certain cases for the seizure of criminating papers necessary for the prosecution of offenders against public justice, and only in one of these ways can they be obtained and their contents made known against the will of the owners.

In the recent case of *Boyd vs. the United States* (116 U. S., 616) the Supreme Court held that a provision of law of Congress which authorized a court of the United States, in revenue cases, on motion of the Government attorney, to require the defendant or claimant to produce in court his private books, invoices, and papers, or that the allegations of the attorney respecting them should be taken as confessed, was unconstitutional and void as applied to suits for penalties or to establish a forfeiture of the party's goods. The court, speaking by Mr. Justice Bradley, said:

Any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers to convict him of crime or to forfeit his property, is contrary to the principles of free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purpose of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom.

The language thus used had reference, it is true, to the compulsory production of papers as a foundation for criminal proceedings, but it is applicable to any such production of the private books and papers of a

party otherwise than in the course of judicial proceedings or a direct suit for that purpose. It is the forcible intrusion into and compulsory exposure of one's private affairs and papers, without judicial process, or in the course of judicial proceedings, which is contrary to the principles of a free government, and is abhorrent to the instincts of Englishmen and Americans.

In his opinion in the celebrated case of *Entick vs. Carrington*, and three other King's messengers, reported at length in 19 Howell's State Trials, 1029, Lord Camden said:

Papers are the owner's goods and chattels; they are his dearest property, and are so far from enduring a seizure, that they will hardly bear an inspection; and though the eye can not, by the laws of England, be guilty of a trespass, yet, where papers are removed and carried away the secret nature of those goods will be an aggravation of the trespass and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and, therefore, it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society.

Compulsory process to produce such papers, not in a judicial proceeding, but before a commission of inquiry, is as subversive of "all the comforts of society" as their seizure under the general warrant condemned in that case. The principles laid down in the opinion of Lord Camden, said the Supreme Court of the United States, "affect the very essence of constitutional liberty and security. They reach further than the concrete form of the case then before the court with its adventitious circumstances; they apply to all invasions on the part of the Government and its employes of the sanctity of man's home and the privacies of life."

In *Kilbourn vs. Thompson* (113 U. S., 168), we have a decision of the Supreme Court of the United States that neither House of Congress has the power to make inquiries into the private affairs of the citizen; that is, to compel exposure of such affairs. That case was this: The firm of Jay Cooke & Co. were debtors of the United States, and it was alleged that they were interested in a "real-estate pool" in the city of Washington, and that the trustees of their estate and effects had made a settlement of their interests with the associates of the firm to the disadvantage and loss of numerous creditors, including the Government of the United States. The House of Representatives, by a resolution reciting these facts, authorized the Speaker to appoint a committee of five to inquire into the matter and history of said "real-estate pool" and the character of the settlement, with the amount of the property involved in which Jay Cooke & Co. were interested, and the amount paid, or to be paid, in said settlement, with power to send for persons and papers, and report to the House. The committee was appointed and organized, and proceeded to make the inquiry directed. A subpoena was issued to one Kilbourn, commanding him to appear before the committee to testify and be examined touching the matters to be inquired into, and to bring with him certain designated records, papers, and maps relating to the inquiry. Kilbourn appeared before the committee and was asked to state the names of the five members of the real-estate pool and where each resided, and he refused to answer the question or to produce the books which had been required. The committee reported the matter to the House, and it ordered the Speaker to issue his warrant, directed to the Sergeant at-Arms, to arrest Kilbourn and bring him before the bar of the House to answer why he should not be punished for contempt. On being brought before the House, Kilbourn persisted in his refusal to answer the question and to produce the books and papers required. He was thereupon held to be in contempt, and committed to

the custody of the Sergeant-at-Arms until he should signify his willingness to appear before the committee and answer the question and obey the *subpœna duces tecum*; and it was ordered that in the mean time the Sergeant-at-Arms should cause him to be confined in the common jail of the District of Columbia. He was accordingly confined in that jail for forty-five days, when he was released on habeas corpus by the chief justice of the supreme court of the District of Columbia. Upon his release he sued the Speaker of the House, the members of the committee, and the Sergeant-at-Arms for his forcible arrest and confinement. The defendants pleaded the facts recited, to which plea the plaintiff demurred. The demurrer was overruled, and judgment ordered for the defendants. On a writ of error to the Supreme Court the judgment was affirmed as to all the defendants except the Sergeant-at-Arms. They, being members of the House, were held to be protected from prosecution for their action. But as to Thompson, the judgment was reversed and the cause remanded for further proceedings. In the Supreme Court the questions involved received great consideration; and it was held that the subject matter of the investigation was judicial and not legislative, and that there was no power in Congress, or in either House, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and, consequently, no authority to compel a witness to testify on the subject.

The House of Representatives [said the court] has the sole right to impeach officers of the Government and the Senate to try them. Were the question of such impeachment before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses and their answer to proper questions in the same manner and by the use of the same means that courts of justice can in like cases. Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.

And again:

If the investigation which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial, and not to the legislative, department of the Government. We think it equally clear that the power asserted is judicial, and not legislative.

And again:

The resolution adopted as a sequence of the preamble contains no hint of any intention of final action by Congress on the subject. In all the argument on the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the Government of their country. By fruitless, we mean that it could result in no valid legislation on the subject to which the inquiry referred.

When the case went back to the supreme court of the District of Columbia and was tried, the plaintiff recovered a verdict for \$60,000 against the Sergeant-at-Arms. A new trial having been granted for excessive damages, the plaintiff recovered on the second trial a verdict for \$30,500. This amount was subsequently reduced to \$20,000, which was paid by order of Congress, with interest and costs of suit. (23 U. S., p. 467, McArthur and Mackey Rep., 416, 432.)

This case will stand for all time as a bulwark against the invasion of the right of the citizen to protection in his private affairs against the unlimited scrutiny of investigation by a Congressional committee. The courts are open to the United States as they are to the private citizen, and both can there secure, by regular proceedings, ample protection of all rights and interests which are entitled to protection under a government of a written constitution and laws.

The act of Congress not only authorizes a searching investigation into the methods, affairs, and business of the Central Pacific Railroad Company, but it makes it the duty of the Railway Commission to inquire into, ascertain, and report whether any of the directors, officers, or employes of that company have been, or are now, directly or indirectly, interested, and to what extent, in any railroad, steam-ship, telegraph, express, mining, construction, or other business company or corporation, and with which any agreements, undertakings, or leases have been made or entered into. There are over one hundred officers, principal and minor, of the Central Pacific Railroad Company, and nearly five thousand employes. It is not unreasonable to suppose that a large portion of these have some interest, as stockholders or otherwise, in some other company or corporation with which the railway company may have an agreement of some kind, and it would be difficult to state the extent to which the explorations of the Commission in to the private affairs of these persons may not go if the mandate of the act could be fully carried out. But in accordance with the principles declared in the case of *Kilbourn vs. Thompson*, and the equally important doctrines announced in *Boyd vs. The United States*, the Commission is limited in its inquiries as to the interest of these directors, officers, and employes in any other business, company, or corporation to such matters as these persons may choose to disclose. They can not be compelled to open their books and expose such other business to the inspection and examination of the Commission. They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railroad Company, and that other business might as well be the construction and management of other railroads as the planting of vines or the raising of fruit, in which some of those directors and officers and employes have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizens engaged in like business.

With reference to the vouchers respecting which the principal interrogatories are propounded, and to which we are asked to compel answers from the witness, it is conceded by the Commission on this motion that the moneys covered by them were not charged against the United States in ascertaining the net earnings of the company. If such were the case, it is difficult to see what interest the United States can have in the disposition of those moneys. Be that as it may, the Federal courts can not, upon that concession, aid the Commission in ascertaining how the moneys were expended. Those courts can not become the instruments of the Commission in furthering its investigation. Their power, its nature and extent, is defined by the Constitution. The Government established by that instrument is one of delegated powers, supreme in its prescribed sphere, but without authority beyond it. No department of it can exercise any powers not specifically enumerated or necessarily implied in those enumerated. Such is the teaching of all of our great jurists, and the tenth amendment declares that "The powers not delegated to the United States by the Constitution, nor

prohibited by it to the States, are reserved to the States respectively or to the people." Any legislation of Congress beyond the limits of the powers delegated is an invasion of the rights reserved to the States or to the people, and is necessarily void. The first section of the third article of the Constitution declares that "The judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress may, from time to time, ordain and establish." The second section of the same article declares that—

The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

This section was modified by the eleventh amendment, declaring that—

The judicial power shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

As thus modified, the section states all the cases and controversies in which the judicial power of the United States can be exercised, except those arising on a petition for a writ of habeas corpus, which is regarded as a suit for one's personal freedom. The judicial power of the United States is, therefore, vested in the courts, and can only be exercised by them in the cases and controversies enumerated, and in petitions for writs of habeas corpus. In no other proceedings can that power be invoked, and it is not competent for Congress to require its exercise in any other way. Any act providing for such exercise would be a direct invasion of the rights reserved to the States or to the people; and it would be the duty of the court to declare it null and void. Story says, in his Commentaries on the Constitution, that—

The functions of the judges of the courts of the United States are strictly and exclusively judicial. They cannot, therefore, be called upon to advise the President in any executive measures or to give extrajudicial interpretations of law, or to act as commissioners in cases of pensions or other like proceedings. (Sec. 177.)

The judicial article of the Constitution mentions cases and controversies. The term controversies, if distinguishable at all from cases, is so in that it is less comprehensive than the latter and includes only suits of a civil nature. (*Chisholm vs. Georgia*, 2 Dall., 431, 432; 1st Tucker's Commentaries, App., 420, 421.) By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication.

In *Osborn vs. United States* (9 Whea., 819), the Supreme Court, speaking by Chief-Justice Marshall, after quoting the third article of the Constitution declaring the extent of the judicial power of the United States, said:

This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, when any question,

respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States.

In his Commentaries on the Constitution, Mr. Justice Story says:

It is clear that the judicial department is authorized to exercise jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, whenever any question respecting them shall assume such a form that the judicial power is capable of acting upon it. When it has assumed such a form, it then becomes a case; and then, and not till then, the judicial power attaches to it. A case, then, in the sense of this clause of the Constitution, arises when some subject touching the Constitution, laws, or treaties of the United States is submitted to the courts by a party who asserts his rights in the form prescribed by law.

And Mr. Justice Story refers in a note to the speech of Marshall on the case of Robbins, in the House of Representatives, before he became Chief-Justice, which contains a clear statement of the conditions upon which the judicial power of the United States can be exercised. His language was:

By extending the judicial power to all cases in law and equity the Constitution has never been understood to confer on that department any political power whatever. To come within this description, a question must assume a legal form for forensic litigation and judicial decision. There must be parties to come into court, who can be reached by its process and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit.

The proceedings to obtain testimony upon letters rogatory to be used in the courts of foreign countries, is not, as suggested by counsel, an exception to this doctrine. There are certain powers inherent in all courts. The power to preserve order in their proceedings and to punish for contempt of their authority are instances of this kind. And by jurists and text writers the power of the courts of record of one country, as a matter of comity, to furnish assistance, so far as is consistent with their own jurisdiction, to the courts of another country, by taking the testimony of witnesses to be used in the foreign country, or by ordering it to be taken before a magistrate or commissioner, has also been classed among their inherent powers.

For by the law of nations [says Greenleaf] courts of justice of different countries are bound mutually to aid and assist each other, for the furtherance of justice; and hence when the testimony of a foreign witness is necessary, the court before which the action is pending may send to the court within whose jurisdiction the witness resides a writ, either patent or close, usually termed a letter rogatory, or a commission *sub mutuae vicissitudinis obtentu ac in juris subsidium*, from those words contained in it. By this instrument the court abroad is informed of the pendency of the cause, and the names of the foreign witnesses, and is requested to cause their depositions to be taken in due course of law, for the furtherance of justice, with an offer on the part of the tribunal making the request to do the like for the other, in a similar case. (Treatise on evidence, vol. 1, section 320.)

The comity in behalf of which this power is exercised cannot, of course, be invoked by any mere investigating commission. And it would seem that by act of Congress the power of the Federal courts in this respect has been restricted to cases in which a foreign government is a party or has an interest. (R. S., sec. 4071.)

The act of Congress creating the Railway Commission in terms provides, as already stated, that it may invoke the aid of any circuit or district court to require the attendance of witnesses and the production of books, papers, and documents relating to the subject of inquiry; and empowers the court, in case of contumacy or refusal of persons to obey subpoenas to them, to issue orders requiring them to appear before the commissioners, or either of them, and produce the books and

papers ordered, and give evidence touching the matters in question and to punish disobedience to its orders; and does not appear to leave any discretion in the matter with the court. It would seem as though Congress intended that the court should make the orders sought upon the mere request of the Commissioners, without regard to the nature of the inquiry. It is difficult to believe that it could have intended that the court should thus be the mere executor of the Commissioners' will. And yet, if the Commissioners are not bound, as they have asserted, by any rules of evidence in their investigations, and may receive hearsay, *ex parte* statements, and information of every character that may be brought to their attention, and the court is to aid them in this manner of investigation, there can be no room for the exercise of judgment as to the propriety of the questions asked, and the court is left merely to direct that the pleasure of the Commissioners in the line of their inquiries be carried out. But if it was expected that the court, when its aid is invoked, should examine the subject of the inquiries to see their character, so as to be able to determine the propriety and pertinency of the questions, and the propriety and necessity of producing the books, papers, and documents asked for before the Commission, then it would be called upon to exercise advisory functions in an administrative or political proceeding, or to exercise judicial power; if the former, they can not be invested in the court; if the latter, the power can only be exercised in the cases or controversies enumerated in the Constitution, or in cases of habeas corpus.

The provision of the act authorizing the courts to aid in the investigation in the manner indicated must, therefore, be adjudged void. The Federal courts under the Constitution can not be made the aids to any investigation by a commission or a committee into the affairs of any one. If rights are to be protected or wrongs redressed by any investigation, it must be conducted by regular proceedings in the courts of justice in cases authorized by the Constitution.

The inability of the courts of the United States to exercise power in any other than regular judicial proceedings was decided in Hayburn's case as early as 1792 (2 Dall., 409). In March of that year Congress passed an act providing that invalid officers, soldiers, and seamen of the Revolution should be entitled to certain pensions proportionate to the extent of their disability, and devolved upon the circuit court of the United States of the district where the invalids resided the duty of examining the proofs presented of the nature and extent of the disability, and of determining what amount of their monthly pay would be equivalent to the disability ascertained and to certify the same to the Secretary of War, who was to place the names of the applicants returned on the pension list of the United States in conformity thereto, unless where he had cause to suspect imposition or mistake, in which case he was authorized to withhold the name of the applicant from the list and report the same to Congress at its next session (1 Stats. at Large, 244, secs. 2 and 4). Every circuit judge, except one, who did not have the question before him, was of opinion that the law was unconstitutional and void. From a statement of Mr. Justice Curtis, in a note appended to the report of the case, it would seem that the judges were of opinion that the power devolved upon them by the act was not judicial in the sense of the Constitution, and if judicial, that their decisions could not be subject to the revision of the Secretary of War or of the Congress of the United States. Plainly, the power exercised by them in determining the extent to which the invalids were entitled to the pensions provided upon the proof produced was in its nature judi-

cial, for it required examination of evidence and judgment thereon, but it was not judicial in the sense of the Constitution, under which judicial power can be exercised only in the cases enumerated in that instrument. The judges forwarded their conclusions to President Washington, and the act was subsequently repealed.

A suit being afterwards brought against one Yale Todd to recover back the amount of pension paid to him, the question of the validity of the act came before the Supreme Court, and judgment was rendered in favor of the United States for the money. This case will be found stated at length by Chief-Justice Taney in a note to the report of *United States vs. Ferreira* (13 Howard, 52). "The decision," said that great Chief-Justice, "has ever since been regarded and followed by every department of the Government, by the legislative and executive, as well as the judiciary." (*Gordon vs. United States*, 117 U. S., 703.)

The conclusion we have thus reached disposes of the petition of the Railway Commissioners, and renders it unnecessary to consider whether the interrogatories propounded were proper in themselves or were sufficiently met by the answers given by Mr. Stanford, or whether any of them were open to objection for the assumptions they made or the imputations they implied. It is enough that the Federal courts can not be made the instruments to aid the Commissioners in their investigations. It also renders it unnecessary to make any comment upon the extraordinary position taken by them according to the statement of the respondent, to which we have referred, that they did not regard themselves bound in their examination by the ordinary rules of evidence, but would receive hearsay and *ex parte* statements, surmises, and information of every character that might be called to their attention. It can not be that the courts of the United States can be used in furtherance of investigations in which all rules of evidence may be thus disregarded.

The motion of the district attorney for a peremptory order upon the witness to answer the interrogatories as set forth in the petition of the Railway Commission is therefore denied, and the order to show cause is discharged.

CONCURRING OPINION.

SAWYER, circuit judge, concurring :

I fully concur in the reasoning of the circuit justice and the conclusions reached, but I deem it proper to present some further views in support of our decision.

It is necessary to understand the exact legal relation of the Central Pacific Railroad Company to the United States, in order to correctly appreciate the constitutional powers of Congress, and of the Commission acting under its authority, over it. The Central Pacific Railroad Company is a private corporation, created and existing under the laws of the State of California. It derived none of its *corporate* faculties or franchises from the United States. It is in no way subject to the control or laws of the United States, except so far as it is subject to regulation as an instrument of foreign or interstate commerce, or their authority to establish post-roads, or their war powers, in pursuance of the constitutional provisions on the subject, or such regulation as is authorized by the terms of the contract found in the acts of Congress of 1862 and 1864, accepted by the railroad company as a contract. The Central Pacific Railroad Company is simply an artificial person, created with certain faculties by the State of California, and, it stands in relation to the United States, within the scope of its faculties, in

precisely the same situation as a natural person under like circumstances. The United States have no more and no less, power over it, than they would have over a natural person in the same situation. The contract might as well have been made with a natural person as with a corporation. Had the grantee under the acts of Congress been a natural person instead of the Central Pacific Railroad Company, accepting the terms of the contract tendered by the act and constructing the road and performing the conditions of the contract, the rights of the United States would have been precisely such as they are now with respect to the Central Pacific Railroad Company; no more, and no less. Since all the conditions of the contract on the part of the Central Pacific Railroad Company have been fully performed in all respects, so far as they are required to be performed for that purpose, the title to the lands granted has fully vested, and the Government bonds having been delivered, the Central Pacific Railroad Company has become the absolute owner of the road and all its appurtenances, together with the lands granted and bonds issued, subject only to the mortgage to secure the payment of the bonds issued by itself, and the lien of the Government to secure its advances, in all respects in the same manner and to the same extent as if it were a natural person similarly situated. The United States have no further control over or interest in said lands or bonds. The United States, in sections 5 and 6 of the act of 1862 and section 5 of the act of 1864, tendered the railroad companies a contract, and, when accepted, there was a contract between the parties upon the terms specified obligatory upon both, and which could not be changed by either without the consent of the other. Says the Supreme Court in *U. S. vs. C. P. R. R. Co.* (118 U. S., 238), after quoting these provisions:

These sections, taken together, constitute the contract between the United States and the appellee. (*U. S. vs. U. P. R. R. Co.*, 91 U. S., 72; *Sinking Fund Case*, 99 U. S., 700-718; *U. P. R. R. Co. vs. U. S.*, 104 U. S., 662.) *This contract is binding on the United States, and they can not, without the consent of the company, change its terms by any subsequent legislation.* (*Sinking Fund Cases*, *supra.*)

Being the owner, with the title fully vested in it, the company could dispose of the lands and bonds at its own will and pleasure, in the same manner, and to the same extent, and with the same effect, as if the contract had been between two natural persons, without being liable to render any other account to the United States than it could be called upon to render had the United States been an association of an equal number of natural persons.

It is, consequently, a matter of no legal concern to the United States what disposition the company made of the lands or bonds, and they have no right to inquire into the matter of their disposition in any other mode or under any other circumstances than they could have been inquired into had the corporation and the United States been two natural persons.

The relation of the Central Pacific Railroad Company to the United States, therefore, under the contract as a contract, is now simply that of debtor and creditor, with certain covenants for service on its completed road still to be performed by the latter, with the debt and performance of those covenants secured by certain specific liens upon portions of the property of the debtor. They stand upon an equal footing as contractors, and upon the same footing as debtor and creditor, as if the indebtedness, obligations, and securities existed between two natural persons. This is clearly the result, as established by the Supreme Court in the *Sinking Fund* cases, which has by a divided court extended

the power of Congress further in that direction than any other case, and, as it seems to us, to the utmost admissible limit. In those cases the Chief Justice, who announced the opinion of the majority of the court, in speaking of the Union Pacific Company, which is a corporation created by Congress itself, said :

The United States occupy toward this corporation a twofold relation—that of sovereign and that of creditor. (U. S. *vs.* Union Pacific Railroad Company, 98 U. S., 569.) Their rights as a sovereign are not crippled because they are creditors, and their privileges as creditors are not enlarged by the charter because of their sovereignty. They can not, as creditors, demand payment of what is due them before the time limited by the contract. Neither can they, as sovereign or creditors, require the company to pay the other debts it owes before they mature. (99 U. S., 724.)

As to the Central Pacific Railroad Company, the United States do not even occupy the relation of sovereign, except so far as its road extends through the Territories, and then only as to that part of the road within a Territory, which is now only that part in the Territory of Utah, and so far as its authority to regulate commerce with foreign nations and between the States is concerned, and these powers are merely police powers. The organization of the Central Pacific Railroad Company is under and by virtue of the laws of another sovereignty, and its *habitat* is in the State of California, beyond the jurisdiction of the United States, except so far as it is subject to the power of Congress under some special grant of power, or its control is necessary to carry out some power specially granted. We look in vain for any power to deal with it, except the power to regulate its acts, as an instrument of interstate or foreign commerce, or such power as Congress may have over it under its authority to establish post-roads, or under its war powers. The relation of debtor and creditor arising under a contract is but a private relation. It is not a sovereign or governmental relation. And the power reserved in the acts of Congress to repeal or amend the act as to the Central Pacific Railroad Company could only extend to amendment, so far as it operated *as a law*, and not as a contract, and then not to affect the terms of the contract after it had become executed and rights had vested under it.

If, as said by the Supreme Court, the “privileges” of the United States “*as creditors* are not enlarged by the charter, because of their sovereignty,” then no greater powers can be conferred upon the Commission appointed by Congress in this case than Congress could have conferred upon them for the investigation of matters between debtors and creditors who are natural persons, citizens of and residing *within States*. Could a private creditor authorize or lawfully make a compulsory examination of the character provided for in this act into the private affairs of his debtor? Or could Congress, *within a State*, under its limited sovereign powers in a State, authorize a private creditor to make such an examination of his debtor’s affairs and call upon the courts in like manner to compel answers? Can the Government do for itself, *as creditor within a State*, what it cannot do for private creditors? If not, and “*the privileges of the United States as creditors are not enlarged by the charter because of their sovereignty*,” upon what principle can the compulsory examination attempted to be authorized by this act be sustained? I can find none. This investigation, so far as the questions under consideration are concerned, is not for a sovereign governmental purpose, but for the purpose of further securing a private debt not yet matured, already secured by a contract, acceptable to and accepted by the creditor at the time it was made. And—

The United States can not any more than a State interfere with private rights except for legitimate *governmental* purposes. They are not included within the con-

stitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligations in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State, or a municipality, or a citizen. *No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable.* (The Chief Justice in the *Sinking Fund Cases*, 99 U. S., 718, 719.)

Having ascertained the relation of the parties to each other to be that of contractors—that of debtor and creditor by contract simply, in the same sense as if both were natural persons and private citizens—the question arises as to what authority Congress has, within a State, through Commissioners appointed by it, to investigate the private affairs of a mere contract debtor, and ascertain what he has done with his own money, or what he proposes to do with it—whether he is making judicious investment of his money or not—as bearing upon his probable ability to pay his debt, some years in the future, when it shall have matured?

Mr. Justice Field well said, in the *Sinking Fund cases*:

When, therefore, the Government of the United States entered into the contract with the Central Pacific Railroad Company, it could no more than a private corporation or a private individual finally construe and determine the extent of the company's rights and liabilities. If it had cause of complaint against the company, it could not undertake itself, by legislative decree, to redress the grievances, but was compelled to seek redress, as all other civil corporations are compelled, through the judicial tribunals. If the company was wasting its property, of which no allegation is made, or impairing the security of the Government, the remedy by suit was ample. To declare that one of two contracting parties is entitled, under the contract between them, to the payment of a greater sum than is admitted to be payable, or to other or greater security than that given, is not a legislative function. It is judicial action; it is the exercise of judicial power, and all such power, with respect to any transaction arising under the laws of the United States, is vested by the Constitution in the courts of the country. (99 U. S., 759, 760; see also authorities cited.)

I do not understand that this doctrine is questioned by the majority of the court. They only differed as to its applicability in that particular case. I do not understand that the Central Pacific Railroad Company is charged with a violation of any of the terms of its contract, unless it be claimed that it has failed to pay over the full amount of percentage required by the contract of the net earnings of the road. If it has failed in this matter, it is not a matter of any legal concern to the Government what the company has done with its own. If it has failed in this particular, and there is reason for sustaining an action, the proper mode of procedure for ascertaining the truth and enforcing the obligation, if violated, is to institute a suit, alleging the facts, and have an investigation in due course of judicial inquiry, and obtain a judgment for any amount withheld. If the full amount has not been paid over, it matters not to the Government how the balance has been expended. The company is liable like any other debtor upon a contract, and not otherwise. But if it be desirable to trace it, and subject the specific fund to the uses contemplated, and there be sufficient ground for so doing, the courts are the proper tribunals in which to effect that object. So, also, if there be a commission of waste upon the property upon which the debt is secured, the courts afford the proper remedy by a suit in equity to restrain the waste. These are the means afforded by the Constitution and laws to private parties for redressing their

wrongs. And there is no different remedy provided for the Government on its contracts. In such proceedings there would be allegations, which would inform the defendant what it is called upon to meet. In the language cited by Mr. Justice Field, from a case in the supreme court of Massachusetts, "like all other matters involving a controversy concerning public duty and private rights," it would in such proceedings "be adjusted and settled in the regular tribunals where questions of law and fact are adjudicated on fixed, established principles, and according to the forms and usages best adapted to secure the impartial administration of justice." (99 U. S., 761.) A bill in equity that seeks a discovery upon general, loose, and vague allegations is styled a "fishing bill," and such a bill would be at once dismissed on that ground. (Sto. Eq., Pl. 263, 264, and cases cited.) A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law or of evidence, and no restrictions except its own will or caprice, is unknown to our Constitution and laws; and such an inquisition would be destructive of the rights of the citizen and an intolerable tyranny. Let the power once be established and there is no knowing where the practice under it would end.

These principles, it appears to me, are established beyond further controversy in the case of *Kilbourn vs. Thompson* (103 U. S., 168). At the time of the failure of the bankers, Jay Cooke & Co., they were largely indebted to the United States for moneys deposited by the Secretary of the Navy with a branch of the house in London. It was claimed that Jay Cooke & Co. were largely interested in a company dealing in real estate at Washington, known as the "real estate pool," and that a considerable amount of their funds was invested in that speculation. It seems to have been claimed, also, that there was something in the nature of a trust in favor of the Government in the moneys of Cooke, that had gone into the pool. A committee was appointed to investigate the matter and trace the money, with power to send for persons and papers. Kilbourn, supposed to be one of the managers of the pool, was summoned for examination. He refused to testify, on the ground that the House had no authority, in this manner, to inquire into the private affairs of the debtors of the Government, and others connected with them. He was thereupon, upon proceedings for that purpose, committed by the House for contempt, and held in custody forty-five days. After his release he sued the Sergeant-at-Arms of the House and the investigating committee for false imprisonment, and recovered a large judgment of \$60,000, afterwards reduced to \$20,000, on the ground that the House had no authority to make a compulsory investigation, or to commit him for contempt, for the reason that these functions were judicial in their nature, over which the courts alone can have jurisdiction; and this judgment, as against the Sergeant-at-Arms of the House, was affirmed by the Supreme Court. In the course of the decision the court says:

If the United States is a creditor of any citizen, or of any one else, on whom process can be served, the usual, the only legal mode of enforcing payment of the debt is by a resort to a court of justice. For this purpose, among others, Congress has created courts of the United States and officers have been appointed to prosecute the pleas of the Government in these courts. (103 U. S., 193.)

Again :

What was this committee charged to do? To inquire into the nature and history of this real estate pool. How indefinite. What was the real estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of

it. Is it charged with fraud against the Government? Here, again, the courts, and they alone, can afford a remedy. Was it a corporation whose powers Congress could repeal? There is no suggestion of the kind. (Ib., 195.)

Again :

In looking to the preamble and resolutions under which the committee acted, before which Kilbourn refused to testify, we are of opinion that the House of Representatives *not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the Government because it was in its nature clearly judicial. (Ib., 192.)*

And again, after stating some particulars to which the powers of the House to punish extends, the court adds :

Whether the power of punishment in either house, by fine or imprisonment, goes beyond this or not, *we are sure that no person can be punished for contumacy as a witness before either house unless his testimony is required in a matter into which the House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen. (Ib., 190.)*

After a thorough discussion of the case and an elaborate examination of the authorities the court announces its unanimous conclusion in the following terms:

We are of opinion, for these reasons, that the resolution of the House of Representatives authorizing the investigation *was in excess of the power conferred on that body by the Constitution; that the committee, therefore, had no lawful authority to require Kilbourn to testify as a witness beyond what he voluntarily chose to tell; that the orders and resolutions of the House and the warrant of the Speaker under which Kilbourn was imprisoned are in like manner void for want of jurisdiction in that body, and that his imprisonment is without any lawful authority. (Ib., 196.)*

In my judgment the principle established here covers fully the case under consideration. It establishes the position that the House of Representatives has no authority or jurisdiction to make a compulsory inquiry into the disposition of the funds of a conventional debtor of the United States; to inquire what this debtor upon a contract has done with his money, or to inquire into the private affairs of their debtors upon contract and those dealing with such debtors.

It is urged that the decision only goes to the point that private parties dealing with the debtor cannot be examined by the House; that the principle does not extend to the debtor himself, and especially to the Central Pacific Company, which is but a corporation; and that the present investigation only extends to what disposition it has made of the bonds and proceeds of lands received from the Government and the money arising from operating its road.

But there is no such limitation in the ruling. Says the court:

Can the rights of the pool or of its members, *or the rights of the debtor and of the creditor of the debtor, be determined by the report of a committee or by an act of Congress? If they cannot, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the Government? (Ib., 195.)*

That the Central Pacific Railroad is a corporation in no way beholden to the United States for its corporate faculties and franchises and not a natural person cannot affect the question.

It is but an aggregation of natural persons, and is as much a private party as if its constituents were united in a mere partnership instead of a corporation. This principle was maintained in the railroad tax cases (9 Saw., 166), and recognized by the Supreme Court at the argument of the same case on appeal. The bonds issued and the lands granted, as we have before seen, under the authorities cited, upon the completion of the road and the specific earnings of the road thereafter arising, were the absolute property of the Central Pacific Railroad Company, in which the United States had no legal concern whatever, except so far as their

lien by contract covers them. There is no element of a trust, public or otherwise, in the case, as sometimes claimed, except in such sense as any common carrier, whether by ox team, mule team, horse team, railway or steam-ship, exercises a public trust, which is only subject to regulation under the police powers of the Government, State or national, as the case may require. That there is no element of trust in the case is ably shown by Mr. Justice Hunt, in *U. S. vs. Union Pacific Railroad Company* (11 Blatch., 403), and his ruling on this point was affirmed on appeal in 98 U. S., 570. But if there were a trust as claimed, the administration of the laws relating to trusts is the peculiar province of courts of equity. It is no part of the functions of Congress under the Constitution.

It is further urged that the judgment of imprisonment only was held to be beyond the jurisdiction of the House—that the House, or Congress, may investigate and call upon the courts when so authorized, as in the present act, to perform the judicial part of the work by enforcing the requirement of the Commissioners. But there is no such limitation in the language of the court, as will be seen by re-examining the passages quoted. On the contrary, the want of power in the House to punish is grounded on the want of power to investigate at all. It is directly said in the case cited that the House may punish for contempt in certain specified cases wherein the power is conferred by the Constitution, or when necessary to the proper execution of powers expressly conferred. And the court with reference to these instances, as we have seen, says in terms:

Whether the power of punishment in either house by fine and imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either house *unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of those bodies possesses the general power of making inquiry into the private affairs of the citizen.* (*Kilbourn vs. Thompson*, 103 U. S., 190.)

That was a case like this, wherein the House was seeking to inquire into the private affairs of the debtor—seeking to ascertain what that debtor had done with his money, some of which he held as a depositary of the United States.

The decision was not put upon the ground that the House could not in any case punish for contempt, but on the ground that the House, in cases like this, had no authority to make the inquiry at all, and consequently there could be no punishment for contempt, either by the House or any other body or tribunal. Under the act now in question, Congress has undertaken to authorize a commission to make inquiry into the private affairs of its creditors—into the purpose, for which the debtor appropriated its own funds—which the Supreme Court, in the case cited, says it has no power to do, and the Commission is authorized to call upon the courts to aid it in its unlawful inquiry. The court is not called upon to act in any judicial proceeding, or investigation pending before it, or before any other court, in the discharge of its judicial functions, or any matter ancillary to the exercise of its judicial functions. There is no case or controversy at all pending before it of which the proceeding attempted to be authorized is a part, or to which it is ancillary or in any way pertinent. It does not appear to us that it is contemplated by the act that the court, in the investigation provided for, when called upon to aid the Commission shall inquire beyond the point whether the question asked is within the scope of the broad field of inquiry prescribed. And so the Commissioners claim, for they have conducted their investigation on that theory; and they insist that

they are not bound by any rules of evidence or other principles of law observed by courts of justice, and by which the latter are guided and controlled, in the ascertainment of facts in the course of ordinary judicial proceedings. If this be the correct view, the court is expected to compel an answer irrespective of any other considerations. Even questions criminating the witness are to be answered, the only protection to the party being that his answer shall not be used against him in a criminal prosecution—a protection of little avail to any party who should disclose criminal acts upon which an indictment could be found, and should upon compulsion indicate other sources of evidence by means of which the acts disclosed can be proved; and such acts may also constitute offenses under the laws of the State, against which Congress can afford no immunity.

As bearing upon the power of Congress to compel an answer to criminating questions, or compel the production of private papers, see *U. S. vs. Boyd* (116 U. S., 616). The principles therein established are equally applicable to the matter now under consideration. The court seems, therefore, to be called upon to compel, under process for contempt, an answer to any question which the Commission sees fit to ask within the scope of the inquiry attempted to be authorized by the act. If this be so, the court is, simply, made an instrument by this act, in the hands of the Commission, to execute its unregulated and unrestricted will. The court is made the ministerial agent of the Commission to perform its behests, whenever a witness refuses to respond to a question or produce papers within the range of the authority attempted to be given by the statute. The judicial department of the Government is, simply, made, by this act, an adjunct to the legislative department in the exercise of its political and legislative functions and powers to execute its commands, and that, too, in a matter into which Congress, under the decision cited, has no jurisdiction whatever to inquire. I know of no power in Congress to thus render the judicial department subordinate or ancillary to the legislative and executive departments of the Government, or to either of them. If there is any one proposition immutably established, I had supposed it to be that the judiciary department is absolutely independent of the other departments of the Government; that it cannot be called upon to act a part subordinate to any other department of the Government, or to a commission armed with exasperating inquisitorial powers over private affairs, unlimited by any consideration other than its own unregulated discretion. And so I understand the authorities to be.

The functions of the judges of the courts of the United States are strictly and exclusively judicial. They cannot therefore be called upon to advise the President in any interpretation of law, or to act as commissioners in cases of pensions or other like proceedings. (2 Sto. Con., sec. 1777, and cases cited.)

The courts in this instance are called upon not to exercise their ordinary powers in the administration of justice, but to assist Congress in the exercise of its deliberative, legislative, and political powers—to aid it by irregular and extraordinary, not to say unprecedented, means—to act as its agent in matters wholly foreign to the functions of the judiciary.

In my judgment, therefore, reason and the authorities cited establish beyond reasonable ground for controversy the proposition that there is no lawful authority in the Commissioners to compel answers to the various questions propounded and set out in the petition, or any of them, which the respondent refused to answer, nor can the courts be lawfully required to compel answers thereto.

I concur in the order made discharging the order to show cause.

CONCURRING OPINION.

SABIN, J., Concurring.

In announcing my concurrence in the opinions of the circuit justice and the circuit judge in this matter, I do not deem it necessary to review at any length the questions by them so ably and satisfactorily discussed and decided. In this application to the court to issue its subpoena and compel answers to be made to the various questions propounded, the court is called upon to exercise no judicial function or power, unless it be the very slight duty of determining whether or not the questions propounded are within the scope of the inquiry authorized by the act of Congress creating the Commission.

The act itself is most broad and comprehensive in its terms and imposes little, if any, restraint upon the Commission in the field of its inquiry. It scarcely needs the ruling of a court to determine whether the questions propounded, or any questions which may be propounded, by this Commission, are within the scope and purview of the act creating the Commission. But, aside from this most simple and limited duty, if duty it may be, the court has no judicial function to perform in this matter. It is simply called upon by the Commission to execute its will; to compel the attendance and obedience of witnesses—a purely ministerial duty—to serve as a convenient adjunct to the Commission. I cannot think that the courts were organized for any such purpose, or that they can be called upon to perform any such duty.

I need not advert to the nature and character of many of the questions propounded by the Commission, as appears from the record of this proceeding, answers to which the court is asked to compel. They seem to be quite in keeping with some of the extraordinary powers claimed and exercised by the Commission, and to fully confirm their assumed right to disregard the usual and established rules of evidence and principles of law in conducting their investigations. And this court is seriously asked to lend its aid in furtherance of such purpose. Many of the questions propounded would seem, from the record, to have been answered as fully as it was possible for the witness to answer them. I do not, however, press this consideration, as I think this decision should rest, not upon the simple fact as to whether or not the questions have been fully answered, but upon the broader and more important principles which underlie this whole subject, to wit: Has this Commission lawful right to hold this investigation; to propound these questions and compel answers thereto; to inquire into the private affairs of this respondent, or of the Central Pacific Railroad Company, or of any individual, and invoke the powers of this court to carry out such purpose? These questions are so fully and ably discussed in the opinions rendered that further comment thereon seems unnecessary.

It is not claimed that this is a "case" or a "controversy" between any parties to which the judicial power extends and over which it has proper jurisdiction. Neither the United States nor any other person is making complaint against this respondent or against said railroad company, in any form or manner known to judicial proceedings. No charges are made against the one or the other, by any one, of duties neglected or obligations unfulfilled. In regard to the very account immediately under consideration by the Commission, and in reference to which many of the questions were propounded to which we are asked to compel answers, it is shown that this account was fully settled and adjusted by and between the United States and said company long ago. Upon page

21 of the argument of the United States attorney, submitted in support of this motion, it is stated:

Some question was made as to whether, as a matter of fact, the moneys covered by Mr. Stanford's vouchers had been included in the account rendered to the Government for the purpose of ascertaining the net earnings of the company. The Commissioners do not desire a decision based upon this question, and therefore concede, for the purpose of this motion, that the amounts in question have not been charged as against the United States, to the end that this matter may be disposed of entirely on its merits.

If this be true, what interest then is it to the United States, even if it had a right so to do, to inquire how or in what manner this account accrued or was paid? It concerns the United States in no manner—affects no pecuniary right or interest claimed by it, due or not matured. What interest then has the United States in this inquiry beyond that of any third party whose curiosity might prompt him to inquire into that concerning which he has no right or interest?

Is not this, then, a mere idle inquiry, not made in the interest of, or to preserve or establish the rights of, the Government or any person? Has not any third person, to gratify an idle curiosity, the same right to institute these inquiries and invoke the aid of the courts in support thereof?

Courts do not entertain such investigations or inquiries, or lend their aid thereto. If this power of unlimited, inquisitorial investigation into the affairs of private corporations or companies, or of individuals—and it concerns all alike—shall be once established, who can say where it will end or what will be its limit of injustice at all times, but more especially when called into exercise in times of political excitement, or under the influence of partisan zeal or passion?

In the close adherence to well-settled principles of law, founded upon the just observance of the rights of all parties, will we not find the greatest safety alike to public and private rights?

Without further discussion of the subject, I fully concur in the opinions read and in the order made.

(Indorsed:) Read in open court August 29, 1887.

L. S. B. SAWYER, *Clerk.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the opinions read in open court August 29, 1887, in the therein entitled matter.

Attest my hand and the seal of said circuit court this 26th day of September, 1887.

[SEAL.]

L. S. B. SAWYER, *Clerk.*

JUDGE OGDEN HOFFMAN'S DISSENTING OPINION.

IN THE MATTER OF THE

Application of the Pacific Railway Commission for an order upon a witness before it to answer certain interrogatories propounded to him.

OPINION OF HOFFMAN, JUDGE.

I am unable to concur in the decision of the court refusing to grant the order applied for by the Commissioners.

The application was made in precise conformity to the third section of the act of March 3, 1887.

That section, after conferring power on the Commissioners to require the attendance of witnesses and the production of books, etc., provides that "to that end they may invoke the aid of the courts," and power is given to the courts, in cases of contumacy or refusal of a witness to appear and testify or produce books, etc., before the Commissioners, to issue an order requiring him to do so. And any refusal to obey such order may be punished by such court as a contempt.

Similar and almost identical provisions are contained in the act to regulate commerce, commonly known as the interstate commerce act.

Section 12 of that act, after conferring upon the Commission power to require the attendance and testimony of witnesses and the production of books, papers, etc., provides that "to that end it may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books," etc.

And the courts of the United States are empowered, "in case of contumacy or refusal to obey a subpoena issued to a witness," to order him to appear before the Commission and produce the books or give evidence touching the matter in question, "and any failure to obey such order of the court may be punished by such court as a contempt thereof."

Section 6 of the same act confers upon the courts extensive powers to enforce the orders of the Commission by writs of mandamus and by injunction, disobedience to which is made punishable as for a contempt.

If the grounds on which the decision of the court in the present case are in great part based be correct its aid must be refused not only to these two Commissions but also to all commissions of inquiry created by Congress to obtain information, however necessary to enlightened legislation.

It is not suggested that Congress could constitutionally confer upon any such Commission the judicial power of adjudging a recusant witness guilty of and punishing him for contempt.

If the courts can afford no aid, the only source of information is testimony voluntarily furnished.

The great importance of the questions thus presented will be at once recognized.

It may be suggested that all requisite information will usually be offered to commissions of inquiry voluntarily, and therefore that compulsory process is unnecessary.

But the question is, Does the right exist, to be exercised when found to be necessary?

I think it clear, that the right to require information in aid of legislation is an appropriate and necessary means of enabling Congress to exercise its great and principal, if not sole, function. That it is, therefore, a power conferred upon it by the Constitution by necessary implication; and that as it can only be effectually exerted through and by the aid of the courts, it is the duty and right of the courts to furnish that aid, when required by law, upon notice to the witness, and after full and careful consideration whether the proposed inquiry invades any constitutional right, immunity, or privilege which the witness may claim.

If such a question should be presented I should go as far as either of my associates in maintaining the constitutional rights of the citizen against encroachment by the Commission, whether by its own volition or by direction of Congress.

The application of the Commission, "invoking the aid of the court," has been denied on the grounds:

1. That the duty imposed before the court is merely to enforce by its process the order of the Commission requiring the attendance or evidence of the witness, or the production of books, papers, etc., "relating to the matter under investigation." That the court is clothed with no judicial function whatever; that it is, in fact, degraded into the mere executive officer of the Commission, to be used as the blind instrument for the enforcement of its mandates.

If this be the true construction of the act, I should, without hesitation, unite with my associates in declining to perform so unconstitutional and degrading a function.

That the act will bear this construction, I admit.

That it is the necessary and reasonable construction, I deny.

It is a well-settled rule that when an act of Congress or of a legislature is susceptible of two constructions, one violative of the Constitution and of the private rights of citizens and the other obnoxious to no such objections, the latter interpretation shall be preferred, if for no other reason than a decent respect for the motives and intentions of the legislature.

It will be noted that the language of the act is not mandatory upon the courts, but permissive; it does not impose a duty; it merely confers a right. It is, that the court *may*, when its aid is invoked, issue an order, and the failure to obey such order *may* be punished as a contempt. The words *must* or *shall* are not employed.

The aid here invoked is that of *a court*.

Congress could not have been unaware or unmindful of the facts that the courts of the United States can not be converted in to mere instruments or executive officers of a commission of inquiry.

It seems to me more reasonable and more respectful to Congress to construe these provisions as conferring upon the courts the right to lend their aid only after full consideration and judicial determination of every question raised or objection made by the witness.

That it is its right and duty to consider and adjudge whether the ques-

tion put to the witness is, in the words of the act, "relative to the matter under investigation; whether it violates his right to be protected from inquisitions into his private affairs or into his private papers; whether he has any personal privilege to refuse to answer, and, possibly, whether the question put or the papers required are only colorably in aid of contemplated legislation, but really an essentially inquisitorial investigation to subserve political or personal ends.

Every constitutional right of the citizen would thus be fully protected. And he would receive that protection where, as in all cases, he must ultimately look for it, in the courts of the country.

If I am right in this construction of the statute, the objection fails.

2. The second ground upon which the court has declined to lend its aid raises by far the most important question presented in this case.

It is held by the court that no jurisdiction has been given to it under the Constitution, nor can it be conferred by Congress, to entertain an application of this nature, because there is no "case" or "controversy" before it, such as is contemplated in the provisions which define the extent of the judicial power of the United States.

It will be noted that this ruling does not rest upon the alleged inquisitorial or other objectionable character of the investigation which the railway commission is directed to make.

It applies to *all* commissions of inquiry which Congress may create, and, in effect, denies to Congress the right to obtain information through the instrumentality of such commissions, except from witnesses who voluntarily appear and testify.

I am deeply impressed with the importance of this question, and that in differing from my associates I am liable to error. But it arises in this case and must be considered.

I do not for a moment question that, in the language of Judge Story—

The functions of the judges of the courts of the United States are strictly and exclusively judicial. They can not, therefore, be called upon to advise the President in any executive measures, or to give extra-judicial interpretations of law, or to act as commissioners in cases of pensions or other like proceedings. (Story's Comm. on the Cons., sec. 1777.)

I of course am aware that, by the second section of the third article of the Constitution, the judicial power of the United States is declared to extend to the "*cases and controversies*" therein specified.

In the great case of *Osborn vs. United States*, the Supreme Court, speaking through Chief Justice Marshall, said of this article of the Constitution:

This clause enables the judicial department to receive jurisdiction to the full extent of the constitutional laws and treaties of the United States, where any question respecting them shall assume such a form that the judicial power is capable of acting upon it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law.

It then becomes *a case*, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, treaties, and laws of the United States.

That the questions presented, or which might be presented, in this or other similar proceedings are eminently judicial in their character can not be doubted.

They have involved a judicial inquiry into the constitutional right of Congress to direct an alleged inquisitorial investigation into the private affairs of a citizen, or to compel the production of his private books and papers.

They might also have required the judicial determination of his right to refuse to incriminate himself, or to betray the secrets of the confidential or of professional confidence.

They have also involved an inquiry into the relations of the Government to the aided railways, and especially the Central Pacific, and the limits of its legislative power with regard to them.

They are, therefore, in the highest sense judicial in their nature.

Have they assumed such a *form* that the judicial power is capable of acting upon them?

In a certain sense the "subject has," in the language of Chief Justice Marshall, "been submitted to the court by a party who asserts his rights in a form prescribed by law."

The Commission asserts its right to obtain an answer to the questions put to the witness.

Whether that right exists, they submit to the decision of the court as directed by law, and in the form of a petition asking its aid. That aid the court is authorized by law to afford if in its opinion the Commission has a right to put the questions and obtain an answer to them.

But it seems to be considered that to call the judicial power into activity, and especially its power to issue and enforce compulsory process to a witness, there must be a "*case*" where there are parties plaintiff and defendant before the court in the usual form of litigation.

Such does not seem to have hitherto been the understanding of either the legislative or judicial branches of the Government. No decision is cited in support of this construction of the Constitution.

The courts are empowered by law to issue upon the request or letters rogatory of a foreign tribunal compulsory process to obtain the testimony of a witness.

The power to assist each other in the administration of justice is said to be inherent in all courts, and it is their duty to do so under the comity of nations.

But if the judicial power of the United States extends only to cases before the courts, between parties plaintiff and defendant, and if no power exists to issue compulsory process in aid of an inquiry, directed to be made by a statute of the United States, I have been unable to see how that power can be invoked in aid of judicial investigations in a foreign country. Certainly the courts can possess no inherent power except as conferred directly or indirectly by the Constitution, and it is equally certain they can derive none from the comity of nations.

The laws of Congress also provide that compulsory process may issue to obtain the testimony of a witness *in perpetuam rei memoriam*.

The exercise of this power is not limited to cases actually pending in court between parties plaintiff and defendant. It extends to cases where litigation is expected or merely apprehended.

In all or many of the States extensive powers of investigation and inquiry have been confided to grand juries. In aid of these inquiries compulsory process is freely awarded and enforced by the courts.

If Congress should see fit to confer similar powers on grand juries of the United States and authorize them to invoke the aid of the courts by issuing compulsory process, would the law be deemed unconstitutional except in cases where a prosecution had actually been commenced against a party accused and held to answer by the committing magistrate?

The fact that grand jurors are officers of the court is immaterial. For the question is, can the court issue compulsory process in aid of an investigation where there is no case between parties litigant before the court? If, as I believe, Congress could constitutionally authorize such investigations to be made and empower the courts to afford the aid which would alone render them possible, I fail to perceive why it can not afford the same aid to a commission of inquiry created by law.

If the law had authorized the district attorney, on the report of the commissioners that a witness had refused to attend and testify, to file a petition in the name of the United States on the relation of the commissioners praying that the witness be cited to appear and show cause why compulsory process should not issue against him, a "case" would be made which would fully satisfy the conditions contended for, as necessary to the exercise of judicial power.

But surely the constitutionality of the exercise by the courts of the powers invoked by the Commission must be a matter of substance and not of form, and can not depend upon a slight change in the method of procedure.

The aid which the court is asked to furnish is not merely the expression of its opinion that the witness ought to answer, and a recommendation or even an order to him to do so.

It is to punish him by attachment if he fails to obey the order.

But in all proceedings against defaulting witnesses, the papers, though in the beginning entitled in the name of the parties litigant, are, when the attachment issues, entitled in the name of the State or the people thereof, or of the United States. (*People vs. Ferris*, 9 Johns., 160.)

Whenever, therefore, the court issues its process against the person of the witness, which alone renders its interposition effectual, a case is presented in which the United States is formally the prosecutor and the witness the accused or defendant.

But without insisting strenuously on the force of these observations, which relate to matters of form rather than of substance, and are intended to meet an objection essentially verbal in its nature, it is sufficient to say that in this case a controversy has arisen between commissioners, in the attempted discharge of duties imposed upon them by law, and a witness, as to their right to make and his obligation to answer certain inquiries.

That controversy has, as by law directed, been referred to the court for its decision.

The questions raised are not only judicial in their nature, but require a decision by the court upon the validity under the Constitution of a statute of the United States, and the court is asked to give effect to its decision by declaring the witness to be under no obligation to answer, or by ordering him to do so, and enforcing obedience by means peculiarly judicial in their character.

It appears to me that a "case" has been presented to the court within the judicial grant of the Constitution.

The reasons assigned by the circuit judge in his concurring opinion for refusing to make the order prayed for refer more particularly to the railroads whose affairs the Commissioners are directed to investigate, and especially to the Central Pacific.

It is held by him, in substance, that the Central Pacific Railroad Company is a State corporation, not subject to Federal control any further than a natural person similarly situated would be.

2. That, having complied with the conditions of the grant, it holds its bonds and lands subject to the lien of the Government, in the same way and to the same extent as a natural person would do.

3. That the relation of creditor and debtor exists between the United States and the company with like force and effect as if both were natural persons; the relation being private, and having nothing to do with the power of the Government as sovereign.

4. The United States can not institute a compulsory investigation

into the private affairs of the company, or require it to produce its books, etc., in any other way or to any greater extent than would be lawful in the case of private creditors and debtors.

5. The United States have the same remedy as a private creditor, and no other, to compel payment of moneys due or prevent waste of assets before the debt matures, and that remedy must be by a regular judicial proceeding in due course of law. And Congress has no power to institute a roving legislative inquisition into the affairs of the company to ascertain what it has done or is doing with its money.

[NOTE.—In Senate Ex. Doc. No. 51, first session of the Fiftieth Congress, being the report of the Pacific Railway Commission transmitted to Congress, at this point appears the “syllabus of concurring opinion of Sawyer, circuit judge,” together with the following paragraph, viz: “Statement of the case by Mr. Justice Miller, in his address to the alumni of the law department of the University of Michigan, June 29, 1887.” Manifestly this is an error on the part of the person furnishing the “copy” of said report, as the text of the dissenting opinion of Judge Hoffman in no wise relates to said syllabus or statement. Portions of the syllabus of the decision of Mr. Justice Field—the concluding paragraphs—are credited to Judge Sawyer, and the interpellation of the said syllabus and statement, is an error which seems to have escaped the attention of the person whose duty it was to prepare said “copy” and supervise its publication. This matter being stereotyped, was utilized in this compilation, only a change of paging being supposed necessary, and the error was not discovered until the volume was about to be put to press.]

The nature of such an inquiry could not be mistaken or disputed.

The difference between it and the inquiry addressed to the respondent in this case is obvious.

“As to the existence or nonexistence of the power (to punish for contempt)” in “aid of the legislative functions,” the court expressly declines to decide (p. 189).

But it points out, with much emphasis, that no legislation was contemplated or was even possible on the subject-matter of the investigation ordered.

The resolution [it says] adopted, as a sequence of this preamble, contains no hint of any intention of final action by Congress on the subject. In all the argument of the case, no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested in the government of their country. By “fruitless” we mean that it could result in no valid legislation on the subject to which the inquiry referred. (P. 195.)

The difference in this particular, also, between the investigation directed by law to be made in this case and that ordered by the resolution of the House of Representatives in Kilbourn’s case needs no comment.

The court further adverts to the fact that the matter to be investigated was pending in a court of justice, which had ample power to give

redress to the creditors of Jay Cooke & Co., by setting aside the settlement made by the trustee, if for any reason it could or ought to be set aside. This was a purely judicial function, which could not be exercised by Congress nor conferred by resolution on a committee of one of the two houses.

I have mentioned these particulars to show how widely the case of Kilbourn differs in every essential particular from the case at bar.

The judgment contains no intimation that Congress might not, by statute passed under the ordinary forms of legislation, confer upon a committee of investigation appointed by either or both houses the right to issue or obtain compulsory process for the attendance of witnesses. Still less does it determine the principal question mooted in this case, viz, whether Congress can authorize a commission of inquiry, in aid of legislation, to invoke the aid of the courts to compel the attendance of witnesses, and can constitutionally empower and require the court to afford that aid after it shall have judicially determined that the witness has no valid excuse for refusing to attend or to answer.

As to the nature and the limits of the legislative power of Congress over the aided railroads, the case of course throws no light whatever.

It must be conceded that the United States occupy towards the aided railroads (or at least towards the Union Pacific) a twofold relation—that of sovereign and that of creditor.

Their rights as a sovereign are not crippled because they are creditors, and their privileges as creditors are not enlarged by the charter because of their sovereignty. (*U. S. vs. Union Pacific Co.*, 98 U. S., 569.)

In other words, it is decided in this case that the United States, like private persons, are bound by their contracts, and that they can not by legislation impair the rights of parties with whom they have contracted, or enhance their own in violation of the stipulations of their contract.

But that the United States retain extensive powers of legislation has been recognized by the Supreme Court in two important cases.

By the act of March 3, 1873 (17 Statutes, 509), the Attorney-General was peremptorily ordered to bring a suit in the name of the United States against the Union Pacific Railroad Company. The nature of this suit is thus described by Mr. Justice Miller (page 608):

For the purpose of this suit the court wherein it is brought was vested with power and aided by modes of procedure which it could apply to no other. Parties are subjected to a jurisdiction to which the same court could not subject them in any other suit, and they are required to litigate their rights in a suit common to them and others, with whom they could not be joined under the rules governing such matters in any other case.

These provisions were held to be a valid and constitutional exercise of legislative power.

It must be admitted, therefore, that with regard to the Union Pacific Railroad Company, at least, the United States possesses something more than the powers and rights of a private creditor, and that, though bound by their contracts, they can aid their enforcement by special and exceptional legislation.

It may be observed in addition that the same act conferred jurisdiction “on the proper circuit court of the United States to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law.”

The validity of this provision was not passed upon by the Supreme Court, but it is referred to by Mr. Justice Miller without any intimation that it was unconstitutional.

By the act of May 7, 1878, known as the “Thurman act,” it was pro-

vided in substance that the percentage of net earnings to be paid by both the Union Pacific and the Central Pacific Railroad Companies should thereafter be 25 per cent. of the same instead of 5 per cent., and that the one-half of the earnings for services rendered to the Government by the respective companies, which, by the act of July 2, 1864, was to be paid to the companies, should be retained by the Government to constitute a sinking fund for the ultimate discharge of the indebtedness due to the United States.

This legislation was held by the Supreme Court as valid and constitutional.

The relations of the Central Pacific Company, as a corporation created under the laws of California, to the United States, were elaborately considered by the court, and the validity of the legislation with regard to it, as well as the Union Pacific Company, was affirmed.

In regard to the former company the court observes :

The California corporation was organized under a State law, with an authorized capital of \$8,500,000, to build a road from the city of Sacramento to the eastern boundary of the State, a distance of about 115 miles. * * * No power was granted to build any road outside the State or in the State except between the termini named.

By the act of 1862 Congress granted this corporation the right to build a road from San Francisco or the navigable waters of the Sacramento River to the eastern boundary of the State, and from there through the Territories of the United States, until it met the road of the Union Pacific Company.

For this purpose all the rights, privileges, and franchises were given this company that were granted the Union Pacific Company, except the franchise of being a corporation, and such others as were merely incident to the organization of the company.

The land grants and subsidy bonds to this company were the same in character and quantity as those to the Union Pacific, *and the same right of amendment was reserved.* Each of the companies was required to file in the Department of the Interior its acceptance of the conditions imposed before it could become entitled to the benefits conferred by the act.

This was promptly done by the Central Pacific Company, and *in this way that corporation voluntarily submitted itself to such legislative control by Congress as was reserved under the power of amendment.*

I am unable to perceive how, while this decision remains the law, the right of Congress to investigate its affairs for the purpose of obtaining information in aid of legislation can be questioned.

The investigation ordered by Congress has been characterized as an inquisitorial and an unwarrantable inquiry into the private affairs of the citizen.

That some of the inquiries directed to be made of the officers, stockholders, and employes of the companies are obnoxious to this objection may be conceded. If so, the court would not compel the witnesses to answer them.

The questions which the witness declined to answer in no way referred to his private and individual affairs.

They referred to the disposition made of its earnings by the company of which he is the head. In these earnings the United States is interested to the extent of 25 per cent. of their net amount.

But, if I understand correctly the arguments of counsel and the opinions of the judges, the whole investigation seems to be regarded as inquisitorial and unwarranted.

It seems to have been overlooked that many of the inquiries directed to be made are in the interest of the companies, and presumably included in the subjects of investigation at their instance.

The Commissioners are required—

To ascertain the average cost per annum of Government transportation in the region now traversed by the Pacific railroads between the year 1850 and the comple-

tion of said roads; also, the average cost per annum since such completion, and what additional facilities have been furnished to the Government and people by said roads; also, to inquire what discount the Pacific Railroad and its several branches were forced to make in disposing of the bonds to obtain the gold coin which was the currency of the country through which the greater part of said roads pass. Also, to ascertain the comparative cost of construction of said roads as compared with what they would have cost with the prices of labor and commodities prevailing five years preceding, or five years subsequent to the completion of said roads. Also, to inquire whether or not the Pacific Railroad was completed in less time than was allowed by law; and if so, in how much less time, and if the United States was benefited thereby. Also, to inquire if either of the Pacific railroads have been embarrassed and their earning capacity impaired by antagonistic local or State legislation. Also, to inquire whether the United States, since the Union and Pacific Railroad Companies accepted the terms proposed by Congress for the construction of the Pacific Railroad, has granted aid in lands for building competing parallel railroads to said Pacific railroads; and if so, how many such roads and to what extent such competing lines have impaired the earning capacity of the Pacific Railroad. Also, if the United States have contracts with branch roads controlled by either of said Pacific roads for carrying United States mails; and if so, what service has been performed by them, and what money, if any, has been paid for such service, and what remains due and unpaid; and if the United States, by failing to pay for such mail service, has embarrassed said railroad companies, or either of them, in paying their indebtedness to the United States. Also, to inquire if the several Pacific Railroad Companies have complied with the provisions of an act to alter, etc., * * * commonly known as to the "Thurman act;" and if not, in what particulars they have failed to comply. Also, to inquire what sums the Pacific railroads and their branches can severally pay annually on account of their indebtedness to the United States without imposing such burdens upon the people, and particularly upon the localities through which the roads pass, as to retard the development of the country.

The Commissioners are also directed to consider and report whether the interests of the United States require any extension of the time "for the performance of the obligations to the United States of said companies, or any of them.

* * * * *

"And if in their opinion such extension shall be required by the interests of the United States, they shall submit a scheme for such extension which shall secure to the United States full payment of all debts due them from said companies, with a reasonable rate of interest, in such time as the Commissioners shall propose, *having due regard to the financial ability of said companies, and the proper conduct of their business in such manner as shall afford efficient service to the public.*"

It will not be contended by any one, least of all by the respondent, that the investigation of the matters mentioned in the foregoing extracts from the statute is inquisitorial or offensive, or that it violates the rights of corporations or of their members as individuals.

On the contrary, that distinguished gentleman expressed in his communication to the Commissioners, in reply to their written interrogatories of May 12, 1887, the opinion that—

The creation of the Commission charged by Congress with the duty of examining into the workings and financial management of all railroads that have received aid in bonds from the Government, * * * was an honest and candid admission by Congress that there were equities existing in favor of the railroads in question, which should be inquired into, and to the full benefit of which they are entitled.

And he adds:

I know that such equities exist in favor of the roads I represent, and I am pleased that an opportunity has at length been offered us by Congress to present them in such form as to insure their full and impartial consideration both by it and the people at large.

When all the provisions of the act directing the investigations are considered, it does not seem wholly unworthy of the encomium bestowed upon it by the respondent.

Nor can I perceive with what justice the investigations, so far as the questions under consideration are concerned, can be described as instituted for the purpose of securing "a private debt not yet matured."

The labors of the Commission can give no additional security to the United States for the collection of its debt.

The Commissioners have no judicial powers. Neither the evidence taken by them nor their report would be admissible in a judicial proceeding. Congress may not adopt their conclusions of fact.

Their functions are limited to an inquiry into and ascertainment of facts to be laid before Congress, in view of legislation, possibly, and, as seems to have been expected, favorable to the companies.

But if my convictions had been less strong on the points I have discussed I should still have felt obliged to dissent from the action of the court, refusing the order prayed for.

It has been shown that the questions decided by the court are constitutional questions of grave, I might say transcendent, importance.

The doctrine enunciated in effect denies to Congress the right to invoke the aid of the courts to secure by compulsory process the attendance of any witness before any commission of inquiry, and to the court the right of affording that aid, if invoked.

The immediate effect of this decision, if followed, is to cripple, if not paralyze, the Commissioners in the discharge of a large part of their duties imposed upon them by law.

Much of the information sought for can only be obtained from the officers and employés of the railroads.

So long as those persons supposed they could be compelled to attend and give evidence, they freely responded to the summons of the Commissioners. But now, that they are advised that no power exists to compel them to do so, they will naturally decline to assume the odious attitude of voluntary informers against their employers, and will refuse to produce any papers or disclose any fact which might injuriously affect them.

If the witness had been ordered to answer and had refused, he would have been attached for contempt and committed to the custody of the marshal. From this custody he could have been at once released on habeas corpus, and held to bail in a nominal amount. The important questions raised could thus have been speedily submitted to the Supreme Court for final decision, without the slightest oppression or even inconvenience to the witness.

I know of no way in which the decision now made can be reviewed by that high tribunal.

It is declared by the Supreme Court in the Sinking Fund cases "that every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a reasonable doubt." (99 U. S., 718.)

Whatever may be thought of the validity of the reasoning by which I have attempted to maintain the constitutionality of this statute, it must, I think, be conceded, that the questions are novel and hitherto undecided, and that its unconstitutionality is at least doubtful.

In view of this fact, and of the far-reaching consequences of the decision, I considered it to be the duty of an inferior court not to pronounce against its unconstitutionality by a judgment which could not be reviewed or corrected by the Supreme Court, but, rather, to remit the question to that court for final solution; especially when the means of doing so were simple and speedy, and attended by no injury or inconvenience to any one.

[Order.]

At a stated term, to wit: the July term A. D. 1887, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 29th day of August, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Hon. Stephen J. Field, associate justice of the Supreme Court of the United States; the Hon. Lorenzo Sawyer, circuit judge; the Hon. George M. Sabin, United States district judge of Nevada.

In the matter of the application of the United States Pacific Railway Commission for an order to compel Hon. Leland Stanford to answer certain questions.—No. 5108.

This matter having been heretofore heard and submitted to the court for consideration and decision, and the same having been duly considered, Justice Field reads an opinion, and Judges Sawyer and Sabin concurring opinions, and thereupon it is ordered that the motion of the United States attorney, for a peremptory order upon the witness to answer the interrogatories propounded as set forth in the petition of the Railway Commission be, and the same hereby is, denied, and the order to show cause herein discharged.

[Indorsed.]

No. 5108. United States circuit court, ninth circuit, northern district of California. In the matter of the application of the United States Pacific Railway Commission for an order to compel Leland Stanford to answer certain questions. Certified copy of order.

I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above entitled cause.

Attest my hand and the seal of said circuit court this 5th day of October, A. D. 1887.

[SEAL.]

L. K. B. SAWYER, *Clerk*.

UNITED STATES SUPREME COURT, OCTOBER TERM, 1880.

KILBOURN *v.* THOMPSON.

1. K., for refusing to answer certain questions put to him as a witness by the House of Representatives of the Congress of the United States, concerning the business of a real-estate partnership of which he was a member, and to produce certain books and papers in relation thereto, was, by an order of the House, imprisoned for forty-five days in the common jail of the District of Columbia. He brought suit to recover damages therefor against the Sergeant-at-Arms, who executed the order, and the members of the committee, who caused him to be brought before the House, where he was adjudged to be in contempt of its authority: *Held*, That, although the House can punish its own members for disorderly conduct, or for failure to attend its sessions, and can decide cases of contested elections and determine the qualifications of its members, and exercise the sole power of impeachment of officers of the Government, and may, where the examination of witnesses is necessary to the performance of these duties, fine or imprison a contumacious witness, there is not found in the Constitution of the United States any general power vested in either House to punish for contempt.
2. An examination of the history of the English Parliament and the decisions of the English courts shows that the power of the House of Commons, under the laws and customs of Parliament to punish for contempt, rests upon principles peculiar to it, and not upon any general rule applicable to all legislative bodies.
3. The Parliament of England, before its separation into two bodies, since known as the House of Lords and the House of Commons, was a high court of judicature—the highest in the realm—possessed of the general power incident to such a court of punishing for contempt. On its separation the power remained with each body, because each was considered to be a court of judicature and exercised the functions of such a court.
4. Neither House of Congress was constituted a part of any court of general jurisdiction, nor has it any history to which the exercise of such power can be traced. Its power must be sought alone in some express grant in the Constitution, or be found necessary to carry into effect such powers as are there granted.
5. The court, without affirming that such a power can arise in any case other than those already specified, decides that it can exist in no case where the House, attempting to exercise it, invokes its aid in a matter to which its authority does not extend, such as an inquiry into the private affairs of the citizen.
6. The Constitution divides the powers of the Government which it establishes into the three departments—the executive, the legislative, and the judicial—and unlimited power is conferred on no department or officer of the Government. It is essential to the successful working of the system that the lines which separate those departments shall be clearly defined and closely followed, and that neither of them shall be permitted to encroach upon the powers exclusively confided to the others.
7. That instrument has marked out, in its three primary articles, the allotment of power to those departments, and no judicial power, except that above mentioned, is conferred on Congress or on either branch of it. On the contrary it declares that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress may from time to time ordain and establish.
8. The resolution of the House, under which K. was summoned and examined as a witness, directed its committee to examine into the history and character of what was called “the real-estate pool” of the District of Columbia; and the preamble recited, as the grounds of the investigation, that Jay Cooke & Co., who were debtors of the United States, and whose affairs were then in litigation before a bankruptcy court, had an interest in the pool or were creditors of it. The subject-matter of the investigation was judicial, and *not* legislative. It was then pending before the proper court, and there existed no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently no authority to compel a witness to testify on the subject.
9. It follows that the order of the House, declaring K. guilty of a contempt of its authority, and ordering his imprisonment by the Sergeant-at-Arms, is void, and affords the latter no protection in an action by K. against him for false imprisonment.
10. *Anderson v. Dunn* (6 Wheat., 204) commented on, and some of the reasoning of the opinion overruled and rejected.

11. The provision of the Constitution, that, for any speech or debate in either House, the members shall not be questioned in any other place, exempts them from liability elsewhere for any vote, or report to, or action in their respective Houses, as well as for oral debate. Therefore the plea of the members of the committee that they took no part in the actual arrest and imprisonment of K., and did nothing in relation thereto beyond the protection of their constitutional privilege, is, so far as they are concerned, a good defense to the action.

ERROR to the supreme court of the District of Columbia.

This is an action for false imprisonment brought by Hallett Kilbourn against John G. Thompson, Michael C. Kerr, John M. Glover, Jephtha D. New, Burwell P. Lewis, and A. Herr Smith. The declaration charges that the defendants with force and arms took the plaintiff from his house, and without any reasonable or probable cause, and against his will, confined him in the common jail of the District of Columbia for the period of forty-five days. The defendant Kerr died before process was served upon him.

Thompson pleaded first the general issue, and secondly a special plea, wherein he set forth that the plaintiff ought not to have or maintain his action, because that long before and at the said time when the force and injuries complained of by him are alleged to have been inflicted, and during all the time in the said declaration mentioned, a Congress of the United States was holden at the city of Washington, in the District of Columbia, and was then and there, and during all the time aforesaid, assembled and sitting; that long before and at the time when said force and injuries are alleged to have occurred, and during all the time mentioned, he, the said Thompson, was, and yet is, Sergeant-at-Arms of the House of Representatives, and by virtue of his office, and by the tenor and effect of the standing rules and orders ordained and established by said House for the determining of the rules of its proceedings, and by the force and effect of the laws and customs of said House and of said Congress, was then and there duly authorized and required, amongst other things, to execute the command of said House, from time to time, together with all such process issued by authority thereof as shall be directed to him by its Speaker; that long before and at the time aforementioned one Michael C. Kerr was the Speaker of said House, and by virtue of his office, and by the tenor, force, and effect of said standing rules, orders, laws, and customs, was, among other things, duly authorized and required to subscribe with his proper hand, and to seal with the seal of said House, all writs, warrants, and subpœnas issued by its order; that long before and during said time one George M. Adams was the Clerk of said House, authorized and required to attest and subscribe with his proper hand all writs, warrants, and subpœnas issued by order of said House; that it was among other things ordained, established, and practiced by and under such standing rules, orders, laws, and customs, that all writs, warrants, subpœnas, and other process issued by order of said House shall be under the hand of the Speaker and seal of said House, and attested by said Clerk; and so being under said hand and seal, and so attested, shall be executed pursuant to the tenor and effect of the same by the Sergeant-at-Arms; that said Kerr being such Speaker, and said Adams such Clerk, and the defendant such Sergeant-at-Arms, and while said Congress was in session, the House of Representatives on the 24th day of January, 1876, adopted the following preamble and resolution:

Whereas the Government of the United States is a creditor of the firm of Jay Cooke & Co., now in bankruptcy by order and decree of the district court of the United States in and for the eastern district of Pennsylvania, resulting from the improvident deposits made by the Secretary of the Navy of the United States with

the London branch of said house of Jay Cooke & Co. of the public moneys; and whereas a matter known as the real-estate pool was only partially inquired into by the late joint select committee to inquire into the affairs of the District of Columbia, in which Jay Cooke & Co. had a large and valuable interest; and whereas Edwin M. Lewis, trustee of the estate and effects of said firm of Jay Cooke & Co., has recently made a settlement of the interest of the estate of Jay Cooke & Co. with the associates of said firm of Jay Cooke & Co., to the disadvantage and loss, as it is alleged, of the numerous creditors of said estate, including the Government of the United States; and whereas the courts are now powerless by reason of said settlement to afford adequate redress to said creditors:

Resolved, That a special committee of five members of this House, to be selected by the Speaker, be appointed to inquire into the matter and history of said real-estate pool and the character of said settlement, with the amount of property involved in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers and report to this House.

That in pursuance and by authority of said resolution said Speaker appointed John M. Glover, Jephtha D. New, Burwell B. Lewis, A. Herr Smith, and Henry O. Pratt, who were members of the House of Representatives, to constitute said committee; and the said committee, so appointed, duly organized in the city of Washington, and proceeded to make the inquiry directed; that said committee, by the authority in them vested by said resolution, caused to be issued by the Speaker, under his hand and the seal of the House of Representatives, and duly attested by the Clerk, a subpoena to said Kilbourn, commanding him to appear before said committee to testify and be examined touching and in regard to the matter to be inquired into by said committee; that said Kilbourn was further commanded and ordered by said subpoena to bring with him certain designated and described records, papers, and maps relating to said inquiry; that subsequently to the issue of the subpoena and before the time when the force and injuries complained of are alleged to have been inflicted, Kilbourn, in obedience to the subpoena, appeared before the committee and was examined by it in relation to and in prosecution of said inquiry, and during his examination said Kilbourn was asked the following question: "Will you state where each of the five members reside, and will you please state their names?" which question was pertinent and material to the question of inquiry before the committee, but he knowingly and willfully refused to answer the same; that he, although ordered and commanded by the subpoena to bring with him and produce before the said committee certain records, papers, and maps relating to said inquiry, still when asked by the said committee, "Mr. Kilbourn, are you now prepared to produce, in obedience to the *subpœna duces tecum*, the records which you have been required by the committee to produce?" knowingly and willfully refused to produce them; that subsequently to these refusals, and before the time when the force and injuries complained of are alleged to have been inflicted, to wit, on the fourteenth day of March, 1876, the committee reported to the House, then sitting, the facts above stated, to wit, the resolution creating the committee, the appointment of the members on said committee by the Speaker, the issuing of the *subpœna duces tecum* to said Kilbourn, his appearance before the committee, and his refusal to answer the questions, and his further refusal to produce said records, papers, and maps, and the committee further reported to said House as follows: "The committee are of opinion and report that it is necessary for the efficient prosecution of the inquiry ordered by the House that the said Hallet Kilbourn should be required to respond to the *subpœna duces tecum* and answer the questions which he has refused to answer; and that there is no sufficient reason why the witness should not obey said *subpœna duces tecum* and answer the questions which he

has refused to answer; and that his refusal as aforesaid is in contempt of this House," as by the Journal, record, and proceedings, and report in the said House remaining, reference being thereto had, will more fully appear; that on March 14, 1876, it was, in and by the said House, for good and sufficient cause to the same appearing, resolved and ordered that the Speaker should forthwith issue his warrant, directed to the Sergeant-at-Arms, commanding him to take into custody the body of the said Kilbourn wherever to be found, and the same to have forthwith before the said House, at the bar thereof, to then and there answer why he should not be punished as guilty of contempt of the dignity and authority of the same, and in the meantime to keep the said Kilbourn in his custody to await the further order of the said House. Whereupon such Speaker, on the 14th day of March, 1876, did duly make and issue his certain warrant under his hand and the seal of the House of Representatives, and duly attested, directed to the defendant, as such Sergeant-at-Arms, reciting that the House of Representatives had that day ordered the Speaker to issue his warrant directed to the Sergeant-at-Arms, commanding him to take into custody the body of the said Kilbourn wherever to be found, and the same forthwith to have before the said House, at the bar thereof, then and there to answer why he should not be punished for contempt, and in the meantime to be kept in his, the said defendant's, custody to await the further order of the House; therefore it was required in and by said warrant that the defendant, as such Sergeant-at-Arms as aforesaid, should take into his custody the body of said Kilbourn, and then forthwith to bring him before said House, at the bar thereof, then and there to answer to the charges aforesaid, and to be dealt with by said House according to the Constitution and laws of the United States, and in the meantime to keep said Kilbourn in his custody to await the further order of said House; and the said Kerr, so being such Speaker as aforesaid, then and there delivered said warrant to the defendant as Sergeant-at-Arms to be executed in due form of law; that by virtue and in execution of said warrant the defendant, as such sergeant, in order to arrest said Kilbourn and convey him in custody to the bar of the House to answer to the charge aforesaid, and to be dealt with by said House according to the Constitution and laws of the United States, in obedience to the resolution and order aforesaid, and to the tenor and effect of the said warrant, went to said Kilbourn, and then and there gently laid his hands on him to arrest him, and did then and there arrest him by his body and take him into custody, and did then forthwith convey him to the bar of said House, as it was lawful for the defendant to do for the cause aforesaid; and thereupon such proceedings were had in and by said House that said Kilbourn was then and there forthwith duly heard in his defense, and was duly examined by said House through its Speaker, and was asked in said examination the following question, to wit: "Mr. Kilbourn, are you now prepared to answer, upon the demand of the proper committee of the House, where each of these five members reside?" (meaning the members of the pool) which question was pertinent and material to the question under inquiry; but said Kilbourn did knowingly and willfully refuse to answer the question so asked; that said House, through its Speaker, at the same time and place, asked said Kilbourn the further question, to wit: "Are you (meaning the said Kilbourn) prepared to produce, in obedience to the *subpoena duces tecum*, the records which you have been required by the committee to produce?" (which said records were pertinent and material to the question under inquiry), but he knowingly and willfully declined

and refused to produce them; that thereupon it was then and there resolved by said House as follows:

Resolved, That Hallet Kilbourn having been heard by the House pursuant to the order heretofore made requiring him to show cause why he should not answer questions propounded to him by a committee and respond to the *subpœna duces tecum* by obeying the same, and having failed to show sufficient cause why he should not answer said questions and obey said *subpœna duces tecum*, be, and is, therefore considered in contempt of said House because of said failure.

Resolved, That in purging himself of the contempt for which Hallet Kilbourn is now in custody, the said Kilbourn shall be required to state to the House whether he is now willing to appear before the committee of the House to whom he has hitherto declined to obey a certain *subpœna duces tecum*, and to answer certain questions and obey said *subpœna duces tecum*, and answer said questions; and if he answers that he is ready to appear before said committee and obey said *subpœna duces tecum*, and answer said questions, then said witness shall have the privilege to so appear and obey and answer forthwith, or so soon as said committee can be convened, and that in the meantime the witness remain in custody; and in the event that said witness shall answer that he is not ready to so appear before said committee and obey said *subpœna duces tecum*, and make answer to said questions as aforesaid, then that said witness be recommitted to the said custody for the continuance of said contempt, and that such custody shall continue until the said witness shall communicate to this House through said committee that he is ready to appear before said committee and make such answer and obey said *subpœna duces tecum*; and that in executing this order the Sergeant-at-Arms shall cause the said Kilbourn to be kept in his custody in the common jail of the District of Columbia;

as by the Journal, record, and proceedings of the said resolutions and orders in the said House remaining, reference being thereto had, will more fully appear.

Whereupon said Kerr, so being such Speaker, in pursuance of such standing rules and orders as aforesaid, and according to such laws and customs as aforesaid, and in execution of the order contained in said resolutions, did afterwards, to wit, on the 14th day of March, 1876, duly make and issue his certain warrant, directed to the defendant, as Sergeant-at-Arms, in the following words, to wit:

[Forty-fourth Congress, first session, Congress of the United States.]

IN THE HOUSE OF REPRESENTATIVES, *March 4, 1876.*

To JOHN G. THOMPSON, Esq.,

Sergeant-at-Arms of the House of Representatives:

SIR: The following resolution has this day been adopted by the House of Representatives:

“Resolved, That in purging himself of the contempt for which Hallet Kilbourn is now in custody, the said Kilbourn shall be required to state to the House whether he is now willing to appear before a committee of this House, to whom he has hitherto declined to obey a certain *subpœna duces tecum* and answer certain questions, and obey said *subpœna duces tecum* and make answer to said questions, and if he answers that he is ready to appear before said committee and obey said *subpœna duces tecum* and answer said questions, then said witness shall have the privilege to so appear and obey and answer forthwith, or so soon as the committee can be convened, and that in the meantime the witness shall remain in custody; and in the event that said witness shall answer that he is not ready to so appear before said committee and obey said *subpœna duces tecum* and make answer to said questions as aforesaid, then that said witness be recommitted to the said custody for the continuance of such contempt, and that such custody shall continue until the said witness shall communicate to this House, through said committee, that he is ready to appear before said committee and make such answer and obey said *subpœna duces tecum*; and that in executing this order the Sergeant-at-Arms shall cause the said Kilbourn to be kept in his custody in the common jail of the District of Columbia.”

Now, therefore, you are hereby commanded to execute the same accordingly.

In witness whereof I have hereunto set my hand and caused the seal of the House of Representatives to be affixed the day and year above written.

[SEAL.]

Attest:

M. C. KERR, *Speaker.*

GEORGE M. ADAMS, *Clerk.*

That by virtue and in execution of said warrant, according to its tenor and effect, the defendant, as such Sergeant-at-Arms, in order to arrest the said Kilbourn and convey him in custody to the common jail of the District of Columbia, in obedience to the resolutions and orders aforesaid, went to him and then and there gently laid his hands on him to arrest him, and did then and there arrest him by his body and take him into custody, and forthwith convey him to the common jail of the District of Columbia, and did keep him in custody therein until the 18th day of April, 1876, when and on which day, in response to a writ of habeas corpus issued by order of the chief justice of the supreme court of the District of Columbia, and directed to the defendant as Sergeant-at-Arms, requiring him to produce the body of Kilbourn before the said chief justice at the court-house in the city of Washington, in the District of Columbia; and by direction and order of the said House of Representatives the defendant, as Sergeant-at-Arms, conveyed the said Kilbourn in custody from the common jail of said District to said court-house, and then and there delivered him into the custody of the marshal for the District of Columbia, nor has he had said Kilbourn in his custody since said delivery to said marshal.

Which are the same several supposed trespasses complained of, and no other.

The other defendants pleaded jointly the general issue, and a plea of justification similar to that of the defendant Thompson, except that they alleged themselves to have been members of the House of Representatives, and of a committee of that House, and what they did was in that capacity, and was warranted by the circumstances.

They also added the following:

And these defendants state, that they did not in any manner assist in the last-mentioned arrest and imprisonment of the said Kilbourn, nor were they in any way concerned in the same, nor did they order or direct the same, save and except by their votes in favor of the last above-mentioned resolutions and order commanding the Speaker to issue his warrant for said arrest and imprisonment, and (save and except) by their participation as members in the introduction of and assent to said official acts and proceedings of said House, which these defendants did and performed as members of the said House of Representatives in the due discharge of their duties as members of said House, and not otherwise.

Which are the same several supposed trespasses whereof the said Kilbourn hath above in his said declaration complained against these defendants, and not other or different, with this, that these defendants do aver that the said Kilbourn, the now plaintiff, and the said Kilbourn in the said resolutions, orders, and warrants respectively mentioned, was and is one and the same person, and that at the said several times in this plea mentioned, and during all the time therein mentioned, the said Congress of the United States was assembled, and sitting, to wit, at Washington aforesaid, in the county aforesaid, and these defendants were and are members of the House of Representatives, one of the Houses of said Congress, and as such members, in said participation in the action of the House as above set forth, voted in favor of said resolutions and orders as above set forth, and saving and excepting said participation in the action of the House as set forth in the body of this plea, they had no concern or connection in any manner or way with said supposed trespasses complained of against them by the plaintiff; and this these defendants are ready to verify.

The plaintiff demurred to the special pleas of the defendants. The demurrer having been overruled and judgment rendered for the defendants, the plaintiff sued out this writ of error.

Mr. Charles A. Eldredge, Mr. Enoch Totten, and Mr. Noah L. Jeffries, for the plaintiff in error.

The power to punish a citizen for contempt is not in express terms or by implication conferred by the Constitution of the United States upon either House of Congress. Its assumption is in direct contravention of the fourth and fifth amendments. *Ex parte Lange*, 18 Wall., 163; *Ex parte Milligan*, 4 *id.* 2; *United States v. Cruikshank*,

92 U. S., 542; *Loan Association v. Topeka*, 20 Wall., 655; *Potter's Dwarrior*, 430; *Wilkinson v. Leland*, 2 Pet., 627; *Calder v. Bull*, 3 Dall., 386. It derives no support from the *lex parliamenti* of England, which was entirely distinct and separate from the jurisdiction of Westminster Hall. *King v. Flower*, 8 T. R., 314; *Brass Crosby's Case*, 3 Wils., 188; *Regina v. Paty*, 2 Ld. Rayn., 1105; *Burdett v. Abbott*, 14 East, 1; *Pennock v. Dialogue*, 2 Pet., 1; *Kirkpatrick v. Gibson*, 2 Brock., 388; *Floyde's Case*, 2 How. St. Tr., 1153; *Murray's Case*, 1 Wils., 299; *Bell's Case*, 59 Lords' Jour., 199, 206.

In England the power to punish for contempt is held not to be inherent in legislative assemblies or necessary to the proper discharge of their duties. *Kielley v. Carson*, 4 Moo. P. C., 63; *Fenton v. Hampton*, 11 *id.*, 347; *Doyle v. Falconer*, Law Rep., 1 P. C., 328; *Stockdale v. Hansard*, 9 Ad. & E., 1.

In the first of these cases, the reasoning in *Dunn v. Anderson* (6 Wheat., 204), and the assertions of Mr. Justice Story in his Commentaries on the Constitution of the United States, are referred to with disapprobation. Conceding even that the House of Representatives may lawfully investigate the private affairs of a citizen, the proceeding by which the plaintiff was deprived of his liberty was illegal and the warrant of the Speaker void. Congress, by the act of January 24, 1857, chapter 19 (11 Stat., 155), as modified by sections 102 and 104 of the Revised Statutes, prescribed a means for punishing a person who, having by the authority of either House of Congress been summoned as a witness to give testimony or produce papers upon any matter under inquiry before it, or one of its committees, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry. It is the duty of the presiding officer of that House to certify the fact of such refusal to the "district attorney for the District of Columbia," whose duty it shall be to bring the matter before the grand jury. No other than the prescribed punishment can be inflicted. *Haney v. State*, 5 Wis., 529; *Scringour v. State*, 1 Chand. (Wis.), 48. This is true in matters of contempt. *Bickley v. Commonwealth*, 2 J. J. Marsh (Ky.), 572; *Ex parte Edwards*, 11 Fla., 174; *Dunham v. State*, 6 Iowa, 245; *People v. Liscomb*, 60 N. Y., 559. Double penalties cannot be inflicted. *Driskill v. Parrish*, 3 McLean, 631; *City of Brooklyn v. Toynbee*, 31 Barb. (N. Y.), 282; *Sipperly v. Railroad Company*, 9 How. (N. Y.), Pr., 83; *Washburn v. McInroy*, 7 Johns. (N. Y.), 134; *Tiffany v. Driggs*, 13 *id.*, 252.

Because, as a punishment, the law has denounced a loss of two of the rights of citizenship, it does not follow that a third right is to be withheld from the delinquent. Indeed, the reverse result is the reasonable deduction, because it is clear on common principles that no penalty for crime can be inflicted except that which is expressly prescribed. The fact that several penal consequences are annexed by statute to the commission of a breach of law can not warrant the aggravation, by the judicial hand, of the punishment prescribed. *The State v. Pritchard*, 12 Am. Law Reg. (N. S.), 518; *Ex parte Lange*, 18 Wall., 163; *Rex v. Wright*, 1 Burr., 543; *State v. Bishop*, 7 Conn., 181; *Respublica v. De Longchamps*, 1 Dall., 111; *Emery's Case*, 107 Mass., 172; *State v. Eggesht*, 41 Iowa, 574.

Mr. Walter H. Smith and Mr. Frank H. Hurd, contra.

The House of Representatives has power to arrest and commit persons guilty of a contempt of its authority. *Anderson v. Dunn*, 6 Wheat., 204; *Wickelhausen v. Willett*, 10 Abb. (N. Y.), Pr., 164; *Yates v. Lansing*, 9 Johns. (N. Y.), 395; *Hiss v. Bartlett*, 3 Gray (Mass.), 468;

Johnston v. Commonwealth, 1 Bibb (Ky.), 598; 1 Kent Com., 236; Story, Const., secs. 845, 849; Rawle, Const., 254; Sergeant, Const. Law, 534.

The same doctrine is held by the English courts as applicable to the House of Commons. *Burdett v. Abbott*, 14 East, 1; *Beaumont v. Barrett*, 1 Moo. P. C., 59; *Howard v. Gossett*, 10 Ad. & E. (N. S.), 359.

The decision of the House as to the fact of contempt is conclusive, and can not be collaterally impeached. *Anderson v. Dunn*, *supra*; *Howard v. Gossett*, *supra*; *Burdett v. Abbott*, *supra*; *Ex parte Kearney*, 7 Wheat., 38; *Stockdale v. Hansard*, 9 Ad. & E., 1; *Case of the Sheriff of Middlesex*, 11 *id.*, 273.

With the exception of Thompson, the defendants took no part in the proceedings against the plaintiff other than by making their report to the House and there voting, as members, in support of the resolutions. For what they there did they are protected against being "questioned in any other place."

Thompson acted under the warrant of the Speaker. As an officer of the House, he was charged with the duty of executing its commands, and the law affords him complete protection. *Erskine v. Hornbach*, 14 Wall., 613; *Savacool v. Boughton*, 5 Wend. (N. Y.), 170; *Earl v. Camp*, 16 *id.*, 562; *Chegaray v. Jenkins*, 5 N. Y., 376; *Sprague v. Birchard*, 1 Wis., 457.

The authorities cited by the plaintiff in error do not sustain his position that the Revised Statutes having made provision for the punishment of a recusant witness, he can not be otherwise punished.

The uniform current of authority is the other way. *Rex v. Ossulston*, 2 Stra., 1107; *King v. Pierson*, Andr., 310; *State v. Yancy*, Law Repos. (N. C.), 519; *State v. Woodfin*, 5 Ired. (N. C.), L., 199; *State v. Williams*, 2 Spears (S. C.), 26; *Ex parte Brounsall*, 2 Cowp., 829; *Vertner v. Martin*, 18 Miss., 103; *Foster v. Commonwealth*, 8 Watts & S. (Pa.), 77; *In re King*, 8 Q. B., 129; *In re Wright*, 1 Exch., 658; *Regina v. Martin*, 5 Cox, C. C., 356; *People v. Stevens*, 13 Wend. (N. Y.), 341; *Levy v. The State*, 6 Ind., 281; *Ambrose v. State*, *id.*, 351; *Phillips v. People*, 55 Ill., 429; *Moore v. People*, 14 How., 13; 2 Bishop, Cr. Law, sec. 264.

MR. JUSTICE MILLER, after stating the case, delivered the opinion of the court:

The argument before us has assumed a very wide range, and includes the discussion of almost every suggestion that can well be conceived on the subject. The two extremes of the controversy are, the proposition on the part of the plaintiff that the House of Representatives has no power whatever to punish for a contempt of its authority; and on the part of the defendants that such power undoubtedly exists, and when that body has formally exercised it it must be presumed that it was rightfully exercised.

This latter proposition assumes the form of expression sometimes used with reference to courts of justice of general jurisdiction, that having the power to punish for contempts the judgment of the House that a person is guilty of such contempt is conclusive everywhere.

Conceding for the sake of argument that there are cases in which one of the two bodies, that constitute the Congress of the United States, may punish for contempt of its authority or disregard of its orders, it will scarcely be contended by the most ardent advocate of their power in that respect that it is unlimited.

The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely on the Constitution. Such as are not conferred by that instrument, either expressly or by fair impli-

cation from what is granted, are "reserved to the States respectively, or to the people." Of course, neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body, except in the few instances where authority is conferred on either House separately, as in the case of impeachments. No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains in the provision that no "person shall be deprived of life, liberty, or property without due process of law," the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established. An act of Congress which proposed to adjudge a man guilty of a crime and inflict the punishment, would be conceded by all thinking men to be unauthorized by anything in the Constitution. That instrument, however, is not wholly silent as to the authority of the separate branches of Congress to inflict punishment. It authorizes each House to punish its own members. By the second clause of the fifth section of the first article, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member," and by the clause immediately preceding, it "may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide." These provisions are equally instructive in what they authorize and in what they do not authorize. There is no express power in that instrument conferred on either House of Congress to punish for contempts.

The advocates of this power have, therefore, resorted to an implication of its existence, founded on two principal arguments. These are, first, its exercise by the House of Commons of England, from which country we, it is said, have derived our system of parliamentary law; and second, the necessity of such a power to enable the two Houses of Congress to perform the duties and exercise the powers which the Constitution has conferred on them.

That the power to punish for contempt has been exercised by the House of Commons in numerous instances is well known to the general student of history, and is authenticated by the rolls of the Parliament. And there is no question but that this has been upheld by the courts of Westminster Hall. Among the most notable of these latter cases are the judgments of the court of king's bench, in *Brass Crosby's Case* (3 Wils., 188), decided in the year 1771; *Burdett v. Abbott* (14 East, 1) in 1811, in which the opinion was delivered by Lord Ellenborough, and *Case of the Sheriff of Middlesex* (11 Ad. & E., 273), in 1840. Opinion by Lord Denman, chief justice.

It is important, however, to understand on what principle this power in the House of Commons rests, that we may see whether it is applicable to the two Houses of Congress, and, if it be, whether there are limitations to its exercise.

While there is, in the adjudged cases in the English courts, little agreement of opinion as to the extent of this power, and the liability of its exercise to be inquired into by the courts, there is no difference of opinion as to its origin. This goes back to the period when the bishops, the lords, and the knights and burgesses met in one body, and were, when so assembled, called the high court of Parliament.

They were not only called so, but the assembled Parliament exercised the highest functions of a court of judicature, representing in that

respect the judicial authority of the king in his court of Parliament. While this body enacted laws, it also rendered judgments in matters of private right, which, when approved by the king, were recognized as valid. Upon the separation of the Lords and Commons into two separate bodies, holding their sessions in different chambers, and hence called the House of Lords and the House of Commons, the judicial function of reviewing by appeal the decisions of the courts of Westminster Hall passed to the House of Lords, where it has been exercised without dispute ever since. To the Commons was left the power of impeachment, and, perhaps, others of a judicial character, and jointly they exercised, until a very recent period, the power of passing bills of attainder for treason and other high crimes which are in their nature punishment for crime declared judicially by the high court of Parliament of the Kingdom of England.

It is upon this idea—that the two Houses of Parliament were each courts of judicature originally, which, though divested by usage, and by statute, probably, of many of their judicial functions, have yet retained so much of that power as enables them, like any other court, to punish for a contempt of these privileges and authority—that the power rests.

In the case of *Burdett v. Abbott*, already referred to as sustaining this power in the Commons, Mr. Justice Bailey said, in support of the judgment of the court of king's bench:

In an early authority upon that subject, in Lord Coke, 4 Inst., 23, it is expressly laid down that the House of Commons has not only a legislative character and authority, but is also a court of judicature; and there are instances put there in which the power of committing to prison for contempts has been exercised by the House of Commons, and this, too, in cases of libel. If then, the House be a court of judicature, it must, as in a degree admitted by the plaintiff's counsel, have the power of supporting its own dignity as essential to itself; and without power of commitment for contempts it could not support its dignity.

In the opinion of Lord Ellenborough in the same case, after stating that the separation of the two Houses of Parliament seems to have taken place as early as the 49 Henry III about the time of the battle of Evesham, he says the separation was probably effected by a formal act for that purpose by the king and Parliament. He then adds:

The privileges which have since been enjoyed, and the functions which have been since uniformly exercised by each branch of the legislature, with the knowledge and acquiescence of the other house and of the king, must be presumed to be the privileges and functions which then, that is, at the very period of their original separation, were statutably assigned to each.

He then asks:

Can the high court of Parliament, or either of the two houses of which it consists, be deemed not to possess intrinsically that authority of punishing summarily for contempts which is acknowledged to belong, and is daily exercised as belonging, to every superior court of law, of less dignity undoubtedly than itself?

This power is here distinctly placed on the ground of the judicial character of Parliament, which is compared in that respect with the other courts of superior jurisdiction, and is said to be of a dignity higher than they.

In the earlier case of *Crosby*, lord mayor of London, De Gray, chief justice, speaking of the House of Commons, which had committed the lord mayor to the Tower of London for having arrested by judicial process one of its messengers, says:

Such an assembly must certainly have such authority, and it is legal because necessary. Lord Coke says they have a judicial power; each member has a judicial seat in the House; he speaks of matters of judicature of the House of Commons.

Mr. Justice Blackstone, in concurring in the judgment, said:

The House of Commons is a supreme court, and they are judges of their own privileges and contempts, more especially with respect to their own members.

Mr. Justice Gould also laid stress upon the fact that the "House of Commons may be properly called judges," and cites 4 Coke's Inst., 47, to show that "an alien can not be elected to Parliament, *because such a person can hold no place of judicature.*"

In the celebrated case of *Stockdale v. Hansard* (9 Ad. & E., 1), decided in 1839, this doctrine of the omnipotence of the House of Commons in the assertion of its privileges received its first serious check in a court of law. The House of Commons had ordered the printing and publishing of a report of one of its committees, which was done by Hansard, the official printer of the body. This report contained matter on which Stockdale sued Hansard for libel. Hansard pleaded the privilege of the House, under whose orders he acted, and the question on demurrer was, assuming the matter published to be libelous in its character, did the order of the House protect the publication?

Sir John Campbell, attorney-general, in an exhaustive argument in defense of the prerogative of the House, bases it upon two principal propositions, namely, that the House of Commons is a court of judicature, possessing the same right to punish for contempt that other courts have, and that its powers and privileges rest upon the *lex parliamenti*—the laws and customs of Parliament. These, he says, and cites authorities to show it, are unknown to the judges and lawyers of the common law courts, and rest exclusively in the knowledge and memory of the members of the two Houses. He argues, therefore, that their judgments and orders on matters pertaining to these privileges are conclusive, and can not be disputed or reviewed by the ordinary courts of judicature.

Lord Denman, in a masterly opinion, concurred in by the other judges of the king's bench, ridicules the idea of the existence of a body of laws and customs of Parliament unknown and unknowable to anybody else but the members of the two Houses, and holds with an incontrovertible logic that when the rights of the citizen are at stake in a court of justice it must, if these privileges are set up to his prejudice, examine for itself into the nature and character of those laws, and decide upon their extent and effect upon the rights of the parties before the court. While admitting, as he does in the *Case of the Sheriff of Middlesex* (11 Ad. & E., 273) that when a person is committed by the House of Commons for a contempt in regard to a matter of which that House had jurisdiction, no other court can relieve the party from the punishment which it may lawfully inflict, he holds that the question of the jurisdiction of the House is always open to the inquiry of the courts in a case where that question is properly presented.

But perhaps the most satisfactory discussion of this subject, as applicable to the proposition that the two Houses of Congress are invested with the same power of punishing for contempt, and with the same peculiar privileges, and the same power of enforcing them, which belonged by ancient usage to the Houses of the English Parliament, is to be found in some recent decisions of the privy council. That body is by its constitution vested with authority to hear and decide appeals from the courts of the provinces and colonies of the Kingdom.

The leading case is that of *Kielley v. Carson and others* (4 Moo. P. C., 63), decided in 1841. There were present at the hearing Lord Chancellor Lyndhurst, Lord Brougham, Lord Denman, Lord Abinger, Lord Cottenham, Lord Campbell, Vice-Chancellor Shadwell, the chief jus-

tice of the common pleas, Mr. Justice Erskine, Dr. Lushington, and Mr. Baron Parke, who delivered the opinion, which seems to have received the concurrence of all of the eminent judges named.

Measuring the weight of its authority by the reputation of the judges who sat in the case and agreed to the opinion, it would be difficult to find one more entitled on that score to be received as conclusive on the points which it decided.

The case was an appeal from the supreme court of judicature of Newfoundland. John Kent, one of the members of the house of assembly of that island, reported to that body that Kielley, the appellant had been guilty of a contempt of the privileges of the house in using toward him reproaches, in gross and threatening language, for observations made by Kent in the house; adding, "Your privilege shall not protect you." Kielley was brought before the house, and added to his offense by boisterous and violent language, and was finally committed to jail under an order of the house and the warrant of the speaker. The appellant sued Carson, the speaker, Kent, and other members, and Walsh, the messenger, who pleaded the facts above stated, and relied on the authority of the house as sufficient protection. The judgment of the court of Newfoundland was for the defendants, holding the plea good.

This judgment was supported in argument before the privy council on the ground that the legislative assembly of Newfoundland had the same parliamentary rights and privileges which belonged by usage to the Parliament of England, and that, if this were not so, it was a necessary incident to every body exercising legislative functions to punish for contempt of its authority. The case was twice argued in the privy council, on which its previous judgment in the case of *Beaumont v. Barrett* (1 Moo. P. C., 59) was much urged, in which both those propositions had been asserted in the opinion of Mr. Baron Parke. Referring to that case as an authority for the proposition that the power to punish for a contempt was incident to every legislative body, the opinion of Mr. Baron Parke in the latter case uses this language:

There is no decision of a court of justice, no other authority, in favor of the right, except that of the case of *Beaumont v. Barrett*, decided by the judicial committee, the members present being Lord Brougham, Mr. Justice Bosanquet, Mr. Justice Erskine, and myself. Their lordships do not consider that case as one by which they ought to be bound on deciding the present question. The opinion of their lordships, delivered by myself immediately after the argument was closed, though it clearly expressed that the power was incidental to every legislative assembly, was not the only ground on which that judgment was rested, and therefore, was, in some degree, extrajudicial; but besides, it was stated to be, and was founded entirely on the *dictum* of Lord Ellenborough in *Burdett v. Abbott*, which *dictum*, we all think, can not be taken as authority for the abstract proposition that every legislative body has the power of committing for contempt. The observation was made by his lordship with reference to the peculiar powers of Parliament, and ought not, we all think, to be extended any further. We all, therefore, think that the opinion expressed by myself in the case of *Beaumont v. Barrett* ought not to affect our decision in the present case, and, there being no other authority on the subject, we decide according to the principle of the common law, that the house of assembly have not the power contended for. They are a local legislature, with every power reasonably necessary for the exercise of their functions and duties, but they have not what they erroneously supposed themselves to possess, the same exclusive privileges which the ancient law of England has annexed to the House of Parliament.

In another part of the opinion the subject is thus disposed of:

It is said, however, that this power belongs to the House of Commons in England; and this, it is contended, affords an authority for holding that it belongs, as a legal incident by the common law, to an assembly with analogous functions. But the reason why the House of Commons has this power is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription;

the *lex et consuetudo parliamenti*, which forms a part of the common law of the land, and according to which the high court of Parliament before its division, and the Houses of Lords and Commons since, are invested with many privileges, that of punishment for contempt being one.

The opinion also discusses at length the necessity of this power in a legislative body for its protection, and to enable it to discharge its law-making functions, and decides against the proposition. But the case before us does not require us to go so far, as we have cited it to show that the powers and privileges of the House of Commons of England, on the subject of punishment for contempts, rest on principles which have no application to other legislative bodies, and certainly can have none to the House of Representatives of the United States—a body which is in no sense a court, which exercises no functions derived from its once having been a part of the highest court of the realm, and whose functions, so far as they partake in any degree of that character, are limited to punishing its own members and determining their election. The case, however, which we have just been considering, was followed in the same body by *Fenton v. Hampton* (11 Moo. P. C., 347) and *Doyle v. Falconer* (Law Rep. 1 P. C., 328), in both of which, on appeals from other provinces of the kingdom, the doctrine of the case of *Kielley v. Carson* and others is fully reaffirmed.

We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation.

This latter proposition is one which we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function.

As we have already said, the Constitution expressly empowers each House to punish its own members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

So, also, the penalty which each House is authorized to inflict in order to compel the attendance of absent members may be imprisonment, and this may be for a violation of some order or standing rule on that subject.

Each House is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases; and it may be that a witness would be subject to like punishment at the hands of the body engaged in trying a contested election, for refusing to testify, that he would if the case were pending before a court of judicature.

The House of Representatives has the sole right to impeach officers of the Government, and the Senate to try them. Where the question of such impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.

Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.

It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to Government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. One of these is, that the President is so far made a part of the legislative power that his assent is required to the enactment of all statutes and resolutions of Congress.

This, however, is so only to a limited extent, for a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each House of Congress.

So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles of impeachment.

In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the Government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments can not be exercised by another.

It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and, it is believed, not always without success. The increase in the number of States, in their population and wealth, and in the amount of power, if not in its nature to be exercised by the Federal Government, presents powerful and growing temptations to those to whom that exercise is intrusted, to overstep the just boundaries of their own department, and enter upon the domain of one of the others, or to assume powers not intrusted to either of them.

The House of Representatives having the exclusive right to originate all bills for raising revenue, whether by taxation or otherwise; having with the Senate the right to declare war, and fix the compensation of all officers and servants of the Government, and vote the supplies which must pay that compensation; and being also the most numerous body

of all those engaged in the exercise of the primary powers of the Government, is for these reasons least of all liable to encroachments upon its appropriate domain.

By reason, also, of its popular origin, and the frequency with which the short term of office of its members requires the renewal of their authority at the hands of the people, the great source of all power in this country, encroachments by that body on the domain of coordinate branches of the Government would be received with less distrust than a similar exercise of unwarranted power by any other department of the Government. It is all the more necessary, therefore, that the exercise of power by this body, when acting separately from and independently of all other depositaries of power, should be watched with vigilance, and when called in question before any other tribunal having the right to pass upon it that it should receive the most careful scrutiny.

In looking to the preamble and resolution under which the committee acted, before which Kilbourn refused to testify, we are of opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the Government, because it was in its nature clearly judicial.

The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. If what we have said of the division of the powers of the Government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred. If the investigation which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the Government. We think it equally clear that the power asserted is judicial and not legislative.

The preamble to the resolution recites that the Government of the United States is a creditor of Jay Cooke & Co., then in bankruptcy in the district court of the United States for the eastern district of Pennsylvania.

If the United States is a creditor of any citizen, or of any one else on whom process can be served, the usual, the only legal, mode of enforcing payment of the debt is by a resort to a court of justice. For this purpose, among others, Congress has created courts of the United States, and officers have been appointed to prosecute the pleas of the Government in these courts.

The district court for the eastern district of Pennsylvania is one of them, and, according to the recital of the preamble, had taken jurisdiction of the subject-matter of Jay Cooke & Co.'s indebtedness to the United States, and had the whole subject before it for action at the time the proceeding in Congress was initiated. That this indebtedness resulted, as the preamble states, from the improvidence of a Secretary of the Navy does not change the nature of the suit in the court nor vary the remedies by which the debt is to be recovered. If, indeed, any purpose had been avowed to impeach the Secretary, the whole aspect of the case would have been changed. But no such purpose is disclosed. None can be inferred from the preamble, and the characterization of

the conduct of the Secretary by the term "improvident," and the absence of any words implying suspicion of criminality repel the idea of such purpose, for the Secretary could only be impeached for "high crimes and misdemeanors."

The preamble then refers to "the real-estate pool," in which it is said Jay Cooke & Co. had a large interest, as something well known and understood, and which had been the subject of a partial investigation by the previous Congress, and alleges that the trustee in bankruptcy of Jay Cooke & Co. had made a settlement of the interest of Jay Cooke & Co. with the associates of the firm of Jay Cooke & Co., to the disadvantage and loss of their numerous creditors, including the Government of the United States, by reason of which the courts are powerless to afford adequate redress to said creditors.

Several very pertinent inquiries suggest themselves as arising out of this short preamble.

How could the House of Representatives know, until it had been fairly tried, that the courts were powerless to redress the creditors of Jay Cooke & Co.? The matter was still pending in a court, and what right had the Congress of the United States to interfere with a suit pending in a court of competent jurisdiction? Again, what inadequacy of power existed in the court, or, as the preamble assumes, in all courts, to give redress which could lawfully be supplied by an investigation by a committee of one House of Congress, or by any act or resolution of Congress on the subject? The case being one of a judicial nature, for which the power of the courts usually afford the only remedy, it may well be supposed that those powers were more appropriate and more efficient in aid of such relief than the powers which belong to a body whose function is exclusively legislative. If the settlement to which the preamble refers as the principal reason why the courts are rendered powerless was obtained by fraud, or was without authority, or for any conceivable reason could be set aside or avoided, it should be done by some appropriate proceeding in the court which had the whole matter before it, and which had all the power in that case proper to be intrusted to any body, and not by Congress or by any power to be conferred on a committee of one of the two Houses.

The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By "fruitless" we mean that it could result in no valid legislation on the subject to which the inquiry referred.

What was this committee charged to do?

To inquire into the nature and history of the real-estate pool. How indefinite! What was the real-estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of it. Is it charged with a fraud against the Government? Here, again, the courts, and they alone, can afford a remedy. Was it a corporation whose powers Congress could repeal? There is no suggestion of the kind. The word "pool," in the sense here used, is of modern date, and may not be well understood, but in this case it can mean no more than

that certain individuals are engaged in dealing in real estate as a commodity of traffic; and the gravamen of the whole proceeding is that a debtor of the United States may be found to have an interest in the pool. Can the rights of the pool, or of its members, and the rights of the debtor, and of the creditor of the debtor, be determined by the report of a committee or by an act of Congress? If they can not, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the Government.

The court of exchequer of England was originally organized solely to entertain suits of the king against the debtors of the crown. But after a while, when the other courts of Westminster Hall became overcrowded with business, and it became desirable to open the court of exchequer to the general administration of justice, a party was allowed to bring any common-law action in that court, on an allegation that the plaintiff was debtor to the king, and the recovery in the action would enable him to respond to the king's debt. After a while the court refused to allow this allegation to be controverted, and so, by this fiction, the court came from a very limited to be one of general jurisdiction. Such an enlargement of jurisdiction would not now be tolerated in England, and it is hoped not in this country of written constitutions and laws; but it looks very like it when, upon the allegation that the United States is a creditor of a man who has an interest in some other man's business, the affairs of the latter can be subjected to the unlimited scrutiny or investigation of a Congressional committee.

We are of opinion, for these reasons, that the resolution of the House of Representatives authorizing the investigation was in excess of the power conferred on that body by the Constitution; that the committee, therefore, had no lawful authority to require Kilbourn to testify as a witness beyond what he voluntarily chose to tell; that the orders and resolutions of the House, and the warrant of the Speaker, under which Kilbourn was imprisoned, are, in like manner, void for want of jurisdiction in that body, and that his imprisonment was without any lawful authority.

At this point of the inquiry we are met by *Anderson v. Dunn* (6 Wheat., 204), which in many respects is analogous to the case now under consideration. Anderson sued Dunn for false imprisonment, and Dunn justified under a warrant of the House of Representatives directed to him as Sergeant-at-Arms of that body. The warrant recited that Anderson had been found by the House "guilty of a breach of the privileges of the House, and of a high contempt of the dignity and authority of the same." The warrant directed the Sergeant-at-Arms to bring him before the House, when, by its order, he was reprimanded by the Speaker. Neither the warrant nor the plea described or gave any clew to the nature of the act which was held by the House to be a contempt. Nor can it be clearly ascertained from the report of the case what it was, though a slight inference may be derived from something in one of the arguments of counsel, that it was an attempt to bribe a member.

But, however that may be, the defense of the Sergeant-at-Arms rested on the broad ground that the House, having found the plaintiff guilty of a contempt, and the Speaker, under the order of the House, having issued a warrant for his arrest, that alone was sufficient authority for the defendant to take him into custody, and this court held the plea good.

It may be said that since the order of the House, and the warrant of the Speaker, and the plea of the Sergeant-at-Arms, do not disclose the

ground on which the plaintiff was held guilty of a contempt, but state the finding of the House in general terms as a judgment of guilty, and as the court placed its decision on the ground that such a judgment was conclusive in the action against the officer who executed the warrant, it is no precedent for a case where the plea establishes, as we have shown it does in this case by its recital of the facts, that the House has exceeded its authority.

This is, in fact, a substantial difference. But the court in its reasoning goes beyond this, and though the grounds of the decision are not very clearly stated, we take them to be: That there is in some cases a power in each House of Congress to punish for contempt; that this power is analogous to that exercised by courts of justice, and that it being the well-established doctrine that when it appears that a prisoner is held under the order of a court of general jurisdiction for a contempt of its authority, no other court will discharge the prisoner or make further inquiry into the cause of his commitment. That this is the general rule, though somewhat modified since that case was decided, as regards the relations of one court to another, must be conceded.

But we do not concede that the Houses of Congress possess this general power of punishing for contempt. The cases in which they can do this are very limited, as we have already attempted to show. If they are proceeding in a matter beyond their legitimate cognizance, we are of opinion that this can be shown, and we can not give our assent to the principle that, by the mere act of asserting a person to be guilty of contempt, they thereby establish their right to fine and imprison him, beyond the power of any court or any other tribunal whatever to inquire into the grounds on which the order was made. This necessarily grows out of the nature of an authority which can only exist in a limited class of cases, or under special circumstances; otherwise the limitation is unavailing and the power omnipotent. The tendency of modern decisions everywhere is to the doctrine that the jurisdiction of a court or other tribunal to render a judgment affecting individual rights, is always open to inquiry, when the judgment is relied on in any other proceeding. See *Williamson v. Berry*, 8 How., 495; *Thompson v. Whitman*, 18 Wall., 457; *Knowles v. The Gaslight & Coke Co.*, 19 *id.*, 58; *Pennoyer v. Neff*, 95 U. S., 714.

The case of *Anderson v. Dunn* was decided before the case of *Stockdale v. Hansard*, and the more recent cases in the privy council to which we have referred. It was decided as a case of the first impression in this court, and undoubtedly under pressure of the strong rulings of the English courts in favor of the privileges of the two Houses of Parliament. Such is not the doctrine, however, of the English courts to-day. In the case of *Stockdale v. Hansard* (9 Ad. & E., 1) Mr. Justice Coleridge says:

The House is not a court of law at all in the sense in which that term can alone be properly applied here. Neither originally nor by appeal can it decide a matter in litigation between two parties; it has no means of doing so; it claims no such power; powers of inquiry and of accusation it has, but it decides nothing judicially, except where it is itself a party, in the case of contempts. * * * Considered merely as resolutions or acts, I have yet to learn that this court is to be restrained by the dignity or the power of anybody, however exalted, from fearlessly, though respectfully, examining their reasonableness and justice, where the rights of third persons in litigation before us, depend upon their validity.

Again, he says:

Let me suppose, by way of illustration, an extreme case; the House of Commons resolves that anyone wearing a dress of a particular manufacture is guilty of a breach of privilege, and orders the arrest of such persons by the constable of the parish. An

arrest is made and action brought, to which the order of the House is pleaded as a justification. * * * In such a case as the one supposed, the plaintiff's counsel would insist on the distinction between power and privilege; and no lawyer can seriously doubt that it exists; but the argument confounds them, and forbids us to inquire, in any particular case, whether it ranges under the one or the other. I can find no principle which sanctions this.

The case of *Kielley v. Carson and others* (4 Moo. P. C., 63) from which we have before quoted so largely, held that the order of the assembly, finding the plaintiff guilty of a contempt, was no defense to the action for imprisonment. And it is to be observed that the case of *Anderson v. Dunn* was cited there in argument.

But we have found no better expression of the true principle on this subject than in the following language of Mr. Justice Hoar, in the supreme court of Massachusetts, in the case of *Burnham v. Morrissey*, 14 Gray, 226. That was a case in which the plaintiff was imprisoned under an order of the house of representatives of the Massachusetts legislature for refusing to answer certain questions as a witness and to produce certain books and papers. The opinion, or statement rather, was concurred in by all the court, including the venerable Mr. Chief Justice Shaw:

The house of representatives is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court. That house is not the legislature, but only a part of it, and is, therefore, subject in its action to the laws, in common with all other bodies, officers, and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the constitution; and if they have not, to treat their acts as null and void. The house of representatives has the power under the constitution to imprison for contempt; but the power is limited to cases expressly provided for by the constitution, or to cases where the power is necessarily implied from those constitutional functions and duties, to the proper performance of which it is essential.

In this statement of the law, and in the principles there laid down, we fully concur.

We must, therefore, hold, notwithstanding what is said in the case of *Anderson v. Dunn*, that the resolution of the House of Representatives finding Kilbourn guilty of contempt, and the warrant of its Speaker for his commitment to prison, are not conclusive in this case, and in fact are no justification, because, as the whole plea shows, the House was without authority in the matter.

It remains to consider the matter special to the other defendants set out in their plea, which claims the protection due to their character as members of the House of Representatives. In support of this defense they allege that they did not in any manner assist in the arrest of Kilbourn or his imprisonment, nor did they order or direct the same, except by their votes and by their participation as members in the introduction of, and assent to, the official acts and proceedings of the House, which they did and performed as members of the House, in the due discharge of their duties, and not otherwise.

As these defendants did not make the actual assault on the plaintiff, nor personally assist in arresting or confining him, they can only be held liable on the charge made against them as persons who had ordered or directed in the matter, so as to become responsible for the acts which they directed.

The general doctrine that the person who procures the arrest of

another by judicial process, by instituting and conducting the proceedings, is liable to an action for false imprisonment, where he acts without probable cause, is not to be controverted. Nor can it be denied that he who assumes the authority to order the imprisonment of another is responsible for the acts of the person to whom such order is given, when the arrest is without justification. The plea of these defendants shows that it was they who initiated the proceedings under which the plaintiff was arrested. It was they who reported to the House his refusal to answer the questions which they had put to him, and to produce the books and papers which they had demanded of him. They expressed the opinion in that report that plaintiff was guilty of a contempt of the authority of the House in so acting. It is a fair inference from this plea that they were the active parties in setting on foot the proceeding by which he was adjudged guilty of a contempt, and in procuring the passage of that resolution.

If they had done this in any ordinary tribunal, without probable cause, they would have been liable for the action which they had thus promoted.

The House of Representatives is not an ordinary tribunal. The defendants set up the protection of the Constitution, under which they do business, as part of the Congress of the United States. That Constitution declares that the Senators and Representatives "shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place."

Is what the defendants did in the matter in hand covered by this provision? Is a resolution offered by a member, a speech or debate, within the meaning of the clause? Does its protection extend to the report which they made to the House of Kilbourn's delinquency? To the expression of opinion that he was in contempt of the authority of the House? To their vote in favor of the resolution under which he was imprisoned? If these questions be answered in the affirmative, they can not be brought in question for their action in a court of justice or in any other place. And yet if a report, or a resolution, or a vote is not a speech or debate, of what value is the constitutional protection?

We may, perhaps, find some aid in ascertaining the meaning of this provision, if we can find out its source, and fortunately in this there is no difficulty. For while the framers of the Constitution did not adopt the *lex et consuetudo* of the English Parliament as a whole, they did incorporate such parts of it and with it such privileges of Parliament, as they thought proper to be applied to the two Houses of Congress. Some of these we have already referred to, as the right to make rules of procedure, to determine the election and qualification of its members, to preserve order, etc. In the sentence we have just cited another part of the privileges of Parliament are made privileges of Congress. The freedom from arrest and freedom of speech in the two Houses of Parliament were long subjects of contest between the Tudor and Stuart kings and the House of Commons. When, however, the revolution of 1688 expelled the last of the Stuarts and introduced a new dynasty, many of these questions were settled by a bill of rights, formally declared by the Parliament and assented to by the Crown. 1 W. & M., st. 2, c. 2. One of these declarations is "that the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."

In *Stockdale v. Hansard*, Lord Denman, speaking on this subject, says:

The privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that Princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete immunity. For every paper signed by the speaker by order of the House, though to the last degree calumnious, or even if it brought personal suffering upon individuals, the speaker can not be arraigned in a court of justice. But if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher. So if the speaker by authority of the House order an illegal act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship-money could justify his revenue officer.

Taking this to be a sound statement of the legal effect of the bill of rights and of the parliamentary law of England, it may be reasonably inferred that the framers of the Constitution meant the same thing by the use of language borrowed from that source.

Many of the colonies, which afterwards became States in our Union, had similar provisions in their charters or in bills of rights, which were part of their fundamental laws; and the general idea in all of them, however expressed, must have been the same, and must have been in the minds of the members of the constitutional convention. In the constitution of the State of Massachusetts of 1780, adopted during the war of the Revolution, the twenty-first article of the bill of rights embodies the principle in the following language: "The freedom of deliberation, speech, and debate in either house of the legislature is so essential to the rights of the people, that it can not be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever."

This article received a construction as early as 1808, in the supreme court of that State, in the case of *Coffin v. Coffin* (4 Mass., 1), in which Mr. Chief Justice Parsons delivered the opinion. The case was an action for slander, the offensive language being used in a conversation in the house of representatives of the Massachusetts legislature. The words were not delivered in the course of a regular address or speech, though on the floor of the house while in session, but were used in a conversation between three of the members, when neither of them was addressing the chair. It had relation, however, to a matter which had a few moments before been under discussion. In speaking of this article of the bill of rights, the protection of which had been invoked in the plea, the chief justice said:

These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I, therefore, think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office. And I would define the article as securing to every member exemption from prosecution for everything said or done by him as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular, according to the rules of the house, or irregular and against their rules. I do not confine the member to his place in the house; and I am satisfied that there are cases in which he is entitled to this privilege when not within the walls of the representatives' chamber.

The report states that the other judges, namely, Sedgwick, Sewall, Thatcher, and Parker, concurred in the opinion.

This is, perhaps, the most authoritative case in this country on the construction of the provision in regard to freedom of debate in legislative bodies, and being so early after the formation of the Constitution of the United States, is of much weight. We have been unable to find any decision of a Federal court on this clause of section 6 of article 1, though the previous clause concerning exemption from arrest has been often construed.

Mr. Justice Story (section 866 of his Commentaries on the Constitution) says:

The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual. This privilege also is derived from the practice of the British Parliament, and was in full exercise in our colonial legislation and now belongs to the legislation of every State in the Union as matter of constitutional right.

It seems to us that the views expressed in the authorities we have cited are sound and are applicable to this case. It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, whether it is done vocally, or by passing between the tellers. In short, to things generally done in a session of the House by one of its members in relation to the business before it.

It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment, we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate. In this, as in other matters which have been pressed on our attention, we prefer to decide only what is necessary to the case in hand, and we think the plea set up by those of the defendants who were members of the House is a good defense, and the judgment of the court overruling the demurrer to it and giving judgment for those defendants will be affirmed. As to Thompson, the judgment will be reversed and the case remanded for further proceedings.

So ordered.

THE COURT OF APPEALS OF THE STATE OF NEW YORK—OCTOBER TERM, 1885.

THE PEOPLE, EX REL. WILLIAM McDONALD, RESPONDENT, V. WILLIAM H. KEELER
AS SHERIFF, ETC., APPELLANT.

As by the Penal Code (§ 724) it is declared that it does not affect "any power conferred by law upon any public body * * * to impose or inflict punishment for a contempt," the provision of the Revised Statutes conferring the power upon either house of the legislature to punish as for a contempt, a witness refusing to answer before it or before a committee in legislative proceedings (1 R. S. 154, § 13, sub. 4), was not abrogated by the two provisions of the Penal Code, one (§ 69) making such refusal a misdemeanor, the other (§ 719) declaring that offenses specified in said code, committed after its going into effect, must be punished according to its provisions "and not otherwise."

So, also, as by said code (§ 677) it is declared that "an act or omission which is made criminal and punishable in different ways by different provisions of law may be punished under any one of those provisions, but not under more than one," the rule that no person can be punished twice for the same offense does not require the abrogation of said provision of the Revised Statutes.

The said provision and the subsequent ones providing for its enforcement are not violative of the constitutional provisions declaring that no person shall be deprived of life, liberty, or property, without due process of law; as, if those provisions were within the power of the legislature to enact, proceedings under them are "due process of law."

The legislature had power to enact said provisions; such legislation is not prohibited or restrained by the State constitution or the Constitution of the United States, and except as thus limited, the State legislature possesses the whole legislative power of the State.

Notwithstanding the division of powers between coordinate branches of the State government, and the vesting of the judicial powers in the courts, certain powers in their nature judicial belong to the legislature, and a statute is not necessarily void which involves action on the part of either house in its nature judicial.

Where the statute relates to the proceedings of the legislative body itself and is necessary and appropriate to enable it to perform its constitutional functions, it is not such an invasion of the province of the judiciary as to bring it within any implied prohibition of the Constitution.

The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is necessary and belongs to the legislature, and statutory provisions, such as are contained in the Revised Statutes (1 R. S. 158, § 1 *et seq.*), authorizing legislative committees to take testimony and summon witnesses, are within the limits of legislative powers, as is also a statute authorizing either house to enforce its process by imprisonment of a recusant witness.

It seems this power may only be exercised where the investigation which the committee was conducting was a legislative proceeding which the house was authorized to institute.

It seems, also, that an investigation instituted for the mere purpose of investigation, or for political purposes, not connected with any intended legislation or other matters upon which the house can act, is not a legislative proceeding.

Where, however, public institutions belonging to the State or public officers are ordered to be investigated, it is to be presumed that it is with a view of some legislative action in regard to them.

A witness summoned before a legislative committee has no constitutional or legal right to be attended by, or to the aid of, counsel on his examination. The provision of the State constitution, declaring that "in any trial in any court whatever the party accused shall be allowed to appear and defend * * * with counsel," has no application to a mere witness who is not a party.

The preamble to a resolution of investigation adopted by the senate recited, in substance, that charges of fraud and irregularity had been made against the commissioner of public works of the city of New York, and that it was of vital importance to the taxpayers of the State that the heads of all public departments should be above reproach; by the resolution a committee was authorized to investigate said department to report the result thereof, "and its recommendations concerning the same:" *Held*, That the terms of the resolution indicated that some legislative action was in contemplation to guard against frauds or irregularities, if such were found to exist which could be prevented or rendered more difficult by legislation; and that it was to be presumed the investigation was for this purpose.

Kilbourn v. Thompson (103 U. S., 168), distinguished.

The relator, a witness summoned before said investigating committee, was allowed to be attended and advised by counsel; he having declined to answer certain questions put to him on the ground of the advice of counsel, the committee directed its chairman to no longer recognize his right to have counsel present; thereupon the counsel instructed the witness to withdraw from the committee, which he did without its permission, after being advised that his examination was not concluded, warned not to leave, and informed that if he did so it was at his peril: *Held*, That it was immaterial whether the questions which the witness refused to answer were proper or not, his refusal to remain and submit to further examination was a contempt, subjecting him to punishment.

People, ex rel. McDonald, v. Keeler (32 Hun, 563), reversed.

(Argued April 22, 1885; decided October 6, 1885.)

APPEAL from order of the general term of the supreme court, in the third judicial department, made May 6, 1884, which reversed an order of the court of oyer and terminer in and for the county of

Albany, refusing to discharge relator on habeas corpus from imprisonment, and directed his discharge. (Reported below, 32 Hun, 563.)

The material facts are stated in the opinion.

Nathaniel C. Moak for appellant. The proceeding on habeas corpus is a State writ, governed by the code of civil procedure. (Code Civ. Pro., sections 1991, 2000-2007, 2015, 2066.) The right to appeal is expressly given. (Code Civ. Pro., section 190, subd. 3; sections 2058-2062; *Eighmy v. People*, 78 N. Y., 330; 79 *id.*, 546; *People v. Leonard*, 5 Hun, 626.) Upon habeas corpus only questions of jurisdiction can be raised. (*People v. McCormac*, 4 Park. Cr., 9; *Hill's Notes*, 3 *id.*, 658-660; *Case of Twelve Committees*, 19 Abb. Pr., 401; *People v. Cavanagh*, 2 Park. Cr., 650; *People v. Ruloff*, 5 *id.*, 81; *Stewart's Case*, 1 Abb., 210; *Matter of Prime*, 1 Barb., 340; *People v. McLeod*, 1 Hill, 377; *Benac v. People*, 4 Barb. 31; *Matter of Miller*, 1 Daly, 571; 2 R. S., 563, section 21; 565, section 28; Code of Civ. Pro., sections 1991, 2015, 2022, 2042, 2044, 2041-6; *People v. Donohue*, 84 N. Y., 438; *People v. Pinkerton*, 77 *id.*, 245; *People v. Brynes*, 33 Hun, 98; *People v. Brady*, 56 N. Y., 182; *People v. Com'rs*, 11 Wend., 473; *Commercial B'k v. Canal Com'rs*, 10 *id.*, 30; *People v. Brooklyn*, 1 *id.*, 320; *People v. Van Leuven*, 8 How. Pr., 362; *Fischer v. Langbein*, 13 Abb., N. C., 10; *Kissock v. Grant*, 34 Barb., 144; *Clark v. Holdridge*, 40 How. Pr., 321; *Day v. Bach*, 87 N. Y., 56; *Landt v. Hiltz*, 19 Barb., 283; *Kiernan v. Abbott*, 3 T. & C. 755; 1 Hun, 109.) The relator's petition was no evidence to prove the facts alleged. (*Leary's Case*, 6 Abb. N. C., 43.) The commitment of the relator was expressly authorized by statute. (1 R. S., 154, section 13; 1 Edm. Stat., 152-3; 1 R. S., 158, sections 1, 2; 1 Edm. Stat., 157; *People v. Learned*, 5 Hun, 626; *Burnham v. Morrissy*, 14 Gray, 226; *Matter of Falvey*, 7 Wis., 537.) The senate had the power, independent of constitutional or statutory authority, to order the investigation, to summon witnesses, and to punish those who were contumacious. (*Wickelhausen v. Willett*, 10 Abb., 168; 12 Abb. Pr., 319; 1 Keyes, 521; 4 Abb. Ct. App. Dec., 596; *Thompson v. Kilbourn*, 103 U. S., 182; *Stewart v. Blaine*, 1 McA., 453; *Briggs v. McKellar*, 2 Abb., 30; *Ex parte Nugent*, 1 Brunner's Col. Cas., 296; 1 Am. L. J. (N. S.), 107; 4 Penn. L. J., 220; *People v. Learned*, 5 Hun, 626; *May's Parliamentary Pr.*, 69-110; *East River Gaslight Co. v. Donnelly*, 93 N. Y., 560; *Mills v. Brooklyn*, 32 *id.*, 495; *Babcock v. Cochran*, 32 Hun, 521; *Youmans v. Simmons*, 7 *id.*, 566; *Bank v. Brown*, 26 N. Y., 467; *Matter of Elevated Ry.*, 70 *id.*, 368; *People v. Dayton*, 55 *id.*, 380; *People v. Flagg*, 46 *id.*, 401; *Wheaton v. Peters*, 8 Pet. 658; *U. S. v. Goodwin*, 7 Cranch, 32; *Pennsylvania v. W. B. Co.*, 13 How. (U. S.), 563; *U. S. v. Worrall*, 2 Dall., 393; *Matter of McCarthy*, 29 Cal., 395; *Rutley v. Carson*, 4 Moore's Priv. Coun. Cas., 89.) The proceeding to punish the relator for contempt was not void, because not by "due process of law." (*Hurtado v. California*, 110 U. S., 528; *People v. Supervisors*, 70 N. Y., 233, 235; *Happy v. Mosher*, 48 *id.*, 313; *Owen v. Albany*, 15 Wend., 374; *Matter of Middletown*, 82 N. Y., 196; *Matter of Livingston St.*, *id.*, 622; *Matter of Empire Bk.*, 18 *id.*, 211.) The relator, being a mere witness before the committee, had no right to counsel, and no right to leave because counsel was not allowed to represent him or frame his answers, even if the fact that he did so for that reason could be in any manner brought before the court on habeas corpus. (*Matter of McCarthy*, 29 Cal., 395; *Matter of Falvey*, 7 Wis., 630.)

Frederick W. Whitridge for appellant. The jurisdiction exercised by the senate is conferred by the constitution and by constitutional statutes. (1 R. S., 504, chap. 7, section 13, tit. 2; 3 R. S., 1063, 878,

567; *Leggatt v. Hunter*, 19 N. Y., 463; *People v. Dayton*, 55 *id.*, 380; *Bank of Chenango v. Brown*, 26 *id.*, 469; *Cathcart v. Fire Department*, *id.*, 533; *People v. Draper*, 15 *id.*, 543; Cushing's L. & P. of L. Assemblies, section 717; Cooley's Const. Lim., 133; *Yates v. Lansing*, 9 Johns., 395; *Gossett v. Howard*, 10 Q. B., 359; *Wickelhausen v. Willett*, 10 Abb., 176; *Briggs v. Mackeller*, 2 Abb., 30; 1 Kent's Com., 236; Story's Com., 535.) The legislative power of the senate and assembly is coincident with that of the British Parliament except in so far as expressly limited by the constitution. (Const. of 1777, art. 35; Const. of 1821, art. 7, section 13; *Taylor v. Porter*, 4 Hill, 152; *People v. Morrell*, 21 Wend., 573; Cushing's L. & P. of L. Assemblies, section 677; *People v. Learned*, 5 Hun, 626; *Hiss v. Bartlett*, 3 Gray, 468; *Mason v. Waite*, 5 Ill., 135; *Anderson v. Dunn*, 6 Wheat., 204; *Whitcomb's Case*, 120 Mass., 121; *State v. Matthew*, 37 N. H., 453; *Briggs v. Mackeller*, 2 Abb., 30; *Canal Appraiser v. People*, 17 Wend., 571; Smith's Hist. of N. Y., 339; *Burnham v. Morrissy*, 14 Gray, 246; *Kielley v. Carson*, 4 Moore's P. C. C., 62.) The legislative power of Parliament included the power to punish for contempt. (Lord Campbell's Lives of the Chief Justices, 152, vol. 3; 6 Hansard, 1st series, 354; Parliamentary Pr., 73-74; *Rex v. Crosby*, 3 Wils., 188; *Burdett v. Abbott*, 14 East, 1; *Sheriff of Middlesex*, 11 Ad. & Ell., 273; *Stockdale v. Hansard*, 9 *id.*, 1; *Howard v. Gossett*, 10 Q. B., 359; *King v. Honor*, 8 T. R., 314; *Burdett v. Coleman*, 14 East, 163; 4 Hunt., 401; Brown's Const. Law, 966; May's Const. Hist., chap. 9.) The full powers of Parliament were repeatedly and successfully claimed by the colonial legislature of New York, and the power to punish for contempt in particular has in fact been exercised by it from the very earliest period. (6 Doc. Hist. of N. Y., 695; 4 Docs. Relating to the Hist. of N. Y., 1121, 821, 418; 3 *id.*, 533; Smith's Hist., 263, 2, 403-409; Args. of Smith & Murray, 1753; 1 Dunlap's Hist. of N. Y., 448; Journal of Ass., Nov. 17, 1824; 4 Ass. Doc., 1837.) The case at issue arose strictly within the course of the exercise of the legislative power, to which the power to inquire and to punish for contempt is a necessary incident. (*Wynehamer v. People*, 13 N. Y., 391; *Wickens v. Willett*, 1 Keyes, 525; Smith's Hist. of N. Y., 397; *People v. Learned*, 5 Hun, 626.) The court can inquire only as to the fact of the senate's jurisdiction. (*Ex parte Nugent*, 1 Am. L. J. (N. S.), 107; *Burnham v. Morrissy*, 14 Gray, 10; 2 Daly, 320; *Catlin v. Neilson*, 16 Hun, 214; *Coyle v. Kelly*, 8 Abb., 27; 4 Am. L. Reg. (N. S.), 545; Hurd on Habeas Corpus, 414, and note, 455; *Crosby's Case*, 3 Wils., 183; *Kearney's Case*, 7 Wheat., 38; *Yates' Case*, 4 Johns., 318; *McLoughlin's Case*, 5 Watts & S., 275; *Johnson v. Commonwealth*, 1 Bibb, 602; *Matter of Smithhurst*, 2 Sandf., 724; *Lockwood v. State*, 1 Carter, 161; *People v. Harkley*, 24 N. Y., 75; *Yates v. Lansing*, 9 Johns., 76.) The Penal Code does not abolish the right of the legislature to punish for contempt, and the commitment in this case is sufficient. (*Ex parte Nugent*, 1 Am. L. J. (N. S.), 122).

Thomas C. E. Ecclesine and Hamilton Harris for respondent. The senate, as part of the legislature, is clothed with legislative and not judicial power, and exercises no greater degree of power than it is intrusted with by the constitution. (*Taylor v. Porter*, 4 Hill, 140; *Calder v. Bull*, 3 Dall., 386; *Powers v. Bergen*, 6 N. Y., 366.) The right "to investigate the department" of a city government for the purpose of determining the truth or falsehood of "grave charges of fraud and irregularities" is a judicial and not a legislative power. (Code Crim. Pro., section 223; Laws of 1882, chap 410, section 60; *Kilbourn v. Thompson*,

13 Otto, 193.) The questions Mr. McDonald refused to answer were not material. (*Kilbourn v. Thompson*, 13 Otto, 195.) He had the right to receive the advice of counsel, and the deprivation of that right justified his withdrawal from before that committee. (*People v. Mayor*, etc., 79 N. Y., 582; *People v. Van Allen*, 55 *id.*, 31; *Stewart v. Turner*, 3 Edw. Ch., 458.) If the questions were material and the withdrawal unjustifiable and Mr. McDonald guilty of contempt, the senate had no power to punish for contempt. The power to punish for contempt is a judicial and not a legislative one. (*Kilbourn v. Thompson*, 103 U. S., 168; *Kielley v. Carson*, 4 Moore's P. C. C., 62, 89, 90; *Fenton v. Hampton*, 11 *id.*, 347, 252; *Doyle v. Falconer*, L. R., 1 P. C., 328; *Taylor v. Porter*, 4 Hill, 140; *People v. Draper*, 15 N. Y., 532; *Happy v. Mosher*, 48 *id.*, 313; 2 Bancroft's Hist. U. S., 414; 3 *id.*, 56, 101; 2 Rev. L., 1813, Appendix, 6; 1 Blackst. Com., 160-163; 1 Hallam's Const. Hist., 224-225.) Even if the senate heretofore possessed the power under the Revised Statutes to imprison a witness for refusal to answer questions, yet the provisions of the Revised Statutes in that respect have been abrogated by the Penal Code. (Penal Code, sections 69, 719, 726.) The commitment is fatally defective, and the petitioner must be discharged because it is not shown that the questions witness refused to answer were pertinent or legal and proper to or in the proceeding then before the court. (*In re Quinn*, 1 and 3, Monthly L. Bull.; 7 Abb. (N. Y.), 402.)

RAPALLO, J. The return to the writ of habeas corpus in this case showed that the relator was held by the sheriff in his custody by virtue of a commitment issued by the president and clerk of the senate of this State on the 28th of February, 1884, a copy of which commitment was annexed to the return.

This commitment recited, in part, the proceedings leading to its issuance, and the relator put in a traverse to the return setting forth such proceedings in full and in detail. The case was heard before the court of oyer and terminer of Albany County upon the petition for the writ of habeas corpus, the writ, the return thereto, and the traverse to such return, and it was thereupon ordered that the writ be dismissed and the relator remanded to the custody of the sheriff. On appeal to the general term this order was reversed and the relator was discharged from imprisonment.

From the return and traverse and the recitals contained in the resolutions therein set out, it appears in substance that charges of fraud and irregularity having been made by the public press and others against the commissioner of public works in the city of New York, the senate on the 14th of January, 1884, adopted a resolution directing and empowering its standing committee on the affairs of cities to investigate the department of public works in said city, with power to send for persons and papers and to report the result of such investigation and its recommendations concerning the same to the senate; that the relator being summoned to appear and testify before such committee, attended and, after having been examined at considerable length, declined to answer certain questions propounded to him by the committee and refused to be further examined, and retired from the presence of the committee without their permission.

These facts having been reported by the committee to the senate, that body, on the 25th of February, 1884, directed its president to issue his warrant to the sergeant-at-arms, commanding him to arrest the relator and bring him before the bar of the senate to answer why he should not

be punished as guilty of a contempt of its dignity and authority. A warrant having been accordingly issued, the relator was, on the 27th of February, 1884, brought before the bar of the senate and there arraigned, by its order, for a breach of its privileges, in disobeying a subpoena issued by its committee on cities to appear before said committee and give testimony upon an investigation then pending before it, and in refusing to answer proper questions put by said committee, and in refusing to be further examined before said committee, and he was thereupon called upon for his answer to the charge. He requested to answer by counsel, which request was granted, and, after counsel had been heard in his behalf, a resolution was adopted requiring the committee on cities to report all the testimony and proceedings had by the committee in relation to the relator, on the following day.

On the 28th of February the report was presented and was afterwards, by resolution, made a part of the record in the further consideration of the case. From this report it appears that the relator was allowed to be attended and advised by counsel during his examination before the committee; that on various questions being propounded to him he was instructed by his counsel not to answer, and being required by the committee to answer them, he declined to do so on the ground of the advice of his counsel. After numerous refusals to answer, of this description, the committee, on motion, directed that its chairman no longer recognize the right of the witness to have any counsel present. Thereupon the counsel instructed the witness to withdraw from the committee and leave with him. The chairman stated to the witness that if he did it would be at his peril, and he replied that he took the peril of it. He was informed that his examination was not concluded, and was advised by the chairman not to leave, and the witness replied that he would take the consequences.

This report of the committee having been presented to the senate, on the hearing before it on the 28th of February, the relator, on that day, presented to the senate his affidavit, in which he alleged that he was advised and believed that he was entitled, in any examination held by said committee, to the benefit of the advice and assistance of counsel, as a matter of right and not of courtesy, and that he was advised and believed that the questions that he refused to answer, under the advice of counsel, were improper and immaterial, in that they sought to elicit facts touching his private business, apart from his connection with the department of public works, into which said committee had no authority or warrant of law to inquire, and that he was prepared then to attend before the committee accompanied by his counsel, and, subject to his advice, to answer all proper and material questions which the committee were authorized by law to ask.

The relator being again brought before the bar of the senate and asked by the president whether he was willing to appear before the committee and answer the questions which he had refused to answer, he replied that he would do so by the advice of counsel. The senate thereupon, on the 28th of February, 1884, adopted a resolution as follows:

Resolved, That William McDonald is declared to be in contempt of the senate for refusing to answer, as a witness, pertinent questions propounded by the standing committee on cities, in the investigation of the department of public works of the city of New York, and for quitting the presence of the committee pending his examination as a witness.

Being again brought to the bar and asked the same question as before, he answered, in writing, that he was willing to appear before the committee and answer all proper and material questions if allowed the advice

and assistance of counsel. Thereupon the senate adopted the following resolution:

Resolved, That William McDonald having been declared to be guilty of a contempt of the senate, and being convicted thereof for refusing to answer, as a witness, pertinent questions propounded by the standing committee on the affairs of cities of the senate, in the investigation of the department of public works in the city of New York, and being summoned as a witness and appearing before the committee, for refusing to submit to an examination, as a witness, before such committee, on the subject of said investigation, and quitting the presence of said committee, be and he hereby is remanded into the custody of the sergeant-at-arms, and is hereby sentenced to be, by said sergeant, imprisoned in the county jail of Albany County, there to remain until he shall consent to appear before the standing committee on the affairs of cities, as a witness, and answer the questions put to him by the said committee, in the matter of said investigation, said imprisonment, however, not to extend beyond the final adjournment of the present legislature; and the keeper of the said common jail of the county of Albany is hereby commanded to receive said William McDonald and him safely keep and imprison in said jail until the adjournment of the present legislature, unless sooner discharged by order of the senate.

In pursuance of this resolution the commitment in question was issued by the president and clerk of the senate and directed to the sergeant-at-arms and the sheriff of the county of Albany, and the relator was accordingly imprisoned in the county jail.

The broad ground is now taken on the part of the relator that the senate had no jurisdiction or power to adjudge him guilty of the contempt with which he was charged or to imprison him therefor.

It is needless to enter upon the discussion of the proposition, urged on the part of the appellant and disputed by the respondent, that the power to commit or punish for contempt, which has been exercised by Parliament in England, is vested in the senate and assembly of this State, either by virtue of our adoption of the common law of England, or by reason of such a power being inherent in legislative bodies; for since the year 1830, the whole subject has been regulated in this State by statutory provisions which, if constitutional, must control.

Title 2, chapter 7, part 1 of the Revised Statutes, entitled "of the powers, duties, and privileges of the two houses and their members and officers," provides as follows (section 13):

Each house has the power to punish as a contempt, and by imprisonment, a breach of its privileges, or of the privileges of its members, but such power shall not hereafter be exercised except against persons guilty of one or more of the following offenses:

1. The offense of arresting a member or officer of the house in violation of his privilege from arrest as hereinbefore declared.
2. That of disorderly conduct in the immediate view and presence of the house, and directly tending to interrupt its proceedings.
3. That of publishing any false and malicious report of the proceedings of the house, or of the conduct of a member in his legislative capacity.
4. That of refusing to attend or be examined as a witness either before the house or by a committee to take testimony in legislative proceedings.
5. That of giving or offering a bribe to a member, or of attempting by menace or any other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent him from giving the same.

The five enumerated offenses are the only ones which either house is authorized to punish as contempts, and they take the place of the numerous offenses and acts which were treated by Parliament as contempts; and in place of the varied and severe punishments inflicted by Parliament for such contempt, the statute above cited provides (section 14) that, "in all cases in which either house shall punish any of its members or officers, or any other person, by imprisonment, such imprisonment shall not extend beyond the same session of the legislature."

It is claimed on the part of the relator that the provisions of the

Revised Statutes relative to contumacious witnesses were superseded and abrogated by the Penal Code which took effect December 1, 1882. The argument presented is that by section 69 of the Penal Code, it is declared that "a person who, being present before either house of the legislature, or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor."

Section 719 provides that "an offense specified in this code, committed after the beginning of the day when this code takes effect, must be punished according to the provisions of this code, and not otherwise," and section 726 enacts that "all acts and parts of acts which are inconsistent with the provisions of this act are repealed, so far as they impose any punishment for crime except as herein provided. It is urged that the refusal of a witness to answer before a legislative committee, being by the code made a crime punishable by the courts as a misdemeanor, the provisions of the Revised Statutes making such refusal punishable as a contempt are abrogated and the two statutes can not coexist, for two reasons: *First*, Because no person can be punished twice for the same offense; and, *secondly*, because by the express provision of section 719 an offense for which the code prescribes a punishment can not be punished in any other manner. Throwing out of view the provisions of 2 R. S. 278 and of the Penal Code, sections 680, 681, which permit the punishment of criminal contempts both by indictment and proceedings for contempt, as applicable only to contempts of courts and not to contempts of the legislature, the first of these reasons is answered by section 677 of the Penal Code, which provides that "an act or omission which is made criminal and punishable in different ways, by different provisions of law, may be punished under any one of those provisions, but not under more than one; and a conviction or acquittal under one bars a prosecution for the same act or omission under any other provision." The answer to the second reason assigned is to be found in section 724 of the Penal Code, which was not referred to on the argument, and which declares that "this code does not affect any power conferred by law upon any court-martial or other military authority, or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices," etc.

It seems to us that it was the intent of this section to retain in full force the provisions of the Revised Statutes, conferring authority upon the two houses of the legislature, to impose punishment for the specified contempts, and that we can not avoid meeting the question of the constitutionality of those provisions.

At the time of their enactment, as appears by the note of the revisers, it was assumed that although the State constitution of 1821 was silent upon the subject of the privileges of the legislature or of either house, yet that it was not intended to deprive the two houses of the power which the revisers characterized as indispensable, of punishing contempts, which it had then been determined by the Supreme Court of the United States, in the case of *Anderson v. Dunn* (6 Wheat., 204), was possessed by the Houses of Congress by necessary implication, the Constitution of the United States being equally silent upon the subject, and it was deemed proper to provide a legislative definition of those privileges of the Houses and their members, the breach of which

should be regarded as a contempt. With this view the new provisions were framed. (See note to tit. 2, chap. 7, part 1, R. S.)

The case of *Anderson v. Dunn* (*supra*) was an action for assault and false imprisonment against the Sergeant-at-Arms of the House of Representatives. The defendant pleaded in justification a resolution of the House which cited that the plaintiff had been guilty of a breach of the privileges of the House and of a high contempt of the dignity and authority of the same, and that under a warrant issued by the Speaker by authority of the House, the plaintiff had been brought to its bar and heard in his defense, and adjudged to be guilty, and ordered to be imprisoned. The plea was held good on demurrer, though neither the nature of the contempt nor the evidence of it appeared. A general power to punish for contempt was held to be vested in the House, as necessarily incident to the exercise of its functions, and its adjudication was held sufficient to establish the fact of the contempt.

In the later case of *Kilbourn v. Thompson* (103 U. S., 168), which was a similar action, the plaintiff had, on proceedings similar to those taken in the present case, been convicted of a contempt and sentenced by the House of Representatives to imprisonment. It appeared on the face of the proceedings that the contempt consisted of his refusal to answer a question propounded by a committee of the House appointed by a resolution, which was set forth. This resolution directed the committee to investigate certain business transactions in which the United States Government was interested simply as a creditor of one of the parties, and the Supreme Court held that the preamble and resolution under which the committee was appointed showed upon their face that the investigation ordered did not have for its object any legislative action, or the impeachment of any officer of the Government, but the collection of a debt owing to the Government, a power which Congress could not exercise, but which was vested only in courts of justice; that in ordering such an investigation the House of Representatives exceeded the limits of its powers, and consequently the committee had no authority to require the plaintiff to testify before it. On this sole ground the decision of the court was placed, but in arriving at this conclusion, several important points, which have a bearing upon the question now before us, were discussed in the highly instructive opinion of Miller, J.

The case of *Anderson v. Dunn*, in so far as it held the resolution of the House finding the plaintiff guilty, conclusive, was distinctly overruled.

This decision necessarily involved the point, stated in other parts of the opinion, that a legislative body is not to be assimilated to a court of general jurisdiction; that Congress has no general power of adjudicating upon contempts. The reasoning and authorities upon which this decision is based convince us that it is incontestable. (*Stockdale v. Hansard*, 9 Ad. & El., 1 [opinion of Coleridge, J.]; *Kielley v. Carson*, 4 Moore's, 4 P. C., 63; *Burnham v. Morrissey*, 14 Gray, 226.)

The case of *Anderson v. Dunn* was also distinguished in *Kilbourn v. Thompson* on the ground that as the plea in the first-mentioned case did not disclose the ground on which the plaintiff had been held guilty of contempt, it was no precedent for a case where the plea established, by its recital of the facts, that the House had exceeded its authority. It was also held, following a course of reasoning which need not be repeated here, that the right of the House of Representatives to punish a citizen for a contempt of its authority, derived no support from the precedents and practice of the two Houses of the English Parliament

nor from the adjudged cases in which the English courts have upheld those practices. That the powers of Congress were derived solely from the Federal Constitution, and that such as were not conferred by that instrument, either expressly or by fair implication, were reserved to the States, respectively, or to the people, and that, while the House had power to punish contempts by fine and imprisonment in certain cases, it had no general jurisdiction on the subject, but was confined to those cases where the power was expressly conferred by the Constitution or was necessary to enable the House to exercise its lawful functions. Express power is given by the Constitution to each House to punish its members for disorderly behavior and to compel the attendance of absent members under such penalties as the House may prescribe, and the opinion concedes that among the incidental and implied powers of Congress may be that of compelling the attendance of witnesses and punishing contumacious witnesses in the same manner as could be done by a court of justice, in dealing with cases which Congress is empowered to decide, such as the election and qualification of its members, the trial of a contested election, and proceedings in the House to impeach officers of the Government. Whether their power over recusant witnesses extends beyond those cases, the court, in reviewing the case of *Anderson v. Dunn*, expressly declines to decide, but the court does emphatically declare that, whether the power of punishment in either House by fine or imprisonment goes beyond the specified cases or not, no person can be punished for contumacy as a witness before either House unless his testimony is required in a matter into which the House has jurisdiction to inquire, and that neither of those bodies possesses the general power of making inquiry into the private affairs of the citizen. To the like effect is the opinion of the supreme court of Massachusetts in the case of *Burnham v. Morrissy* (14 Gray, 226).

The house of representatives has the power under the constitution to imprison for contempt, but the power is limited to cases expressly provided for by the constitution or to cases where the power is necessarily implied from those constitutional functions and duties to the proper performance of which it is essential.

It must be borne in mind that the cases cited did not arise under any act of Congress authorizing either House to punish contumacious witnesses, for there is no such act. The question was, whether a general power to punish contempts was inherent in Congress as necessary to the exercise of its functions, independent of any statute. That such a power could be exercised to compel the attendance of witnesses in certain cases was conceded. Whether it existed in cases of investigations properly instituted for purposes of legislation was left an open question. So far as the statutes of the United States were concerned, a different course of proceeding was prescribed. The act of January 24, 1857 (Chap. 19), provided that any person summoned as a witness before either House or a committee thereof, and refusing to appear or to answer any question pertinent to the matter in consideration, should, in addition to the pains and penalties then existing, be liable to indictment and punishment as for a misdemeanor, and it was made the duty of the President of the Senate to certify the fact to the district attorney for the District of Columbia, who was required to lay the matter before the grand jury. This act was incorporated with modifications in the Revised Statutes of the United States. (Secs. 102, 104.) The other pains and penalties alluded to must have had reference to the supposed power to punish for contempt. But if, as contended, no such power can be exercised by Congress under the limited

authority delegated to it by the Constitution, the power could not be created and conferred by any act of Congress.

The case now before us is entirely different. It arises under a statute enacted by the legislature of the State of New York. The inquiry is not whether the power to enact such a law is to be found in the State constitution, but whether such legislation is prohibited or restrained by that instrument, or by the Constitution of the United States. Except as thus limited the State legislature possesses the whole legislative power of the State. (*Bank of Chenango v. Brown*, 26 N. Y., 469; *People v. Dayton*, 55 *id.*, 380.)

The only express provision of the State constitution which is claimed to be violated, is that which declares that no person shall be deprived of life, liberty, or property without due process of law. If the statute in question was within the power of the legislature to enact, the proceedings against the relator were due process of law. He was imprisoned by virtue of a preexisting law, informed of the charge made against him, and was heard in person and by counsel in his defense. The proceedings need not be according to the course of the common law (*Happy v. Mosher*, 48 N. Y., 313; *People v. Supervisors*, 70 *id.*, 228), and we necessarily come back to the question whether the legislature had power to enact the law.

But the main ground upon which the statute is assailed is, that it confers upon each of the two houses a power, which is in its nature judicial, to hear, adjudge, and condemn; that no such power can be conferred by statute upon the legislature itself or either branch thereof; that the constitution gives the senate and assembly only legislative power, and that judicial power is vested in the courts named in the constitution and in such inferior courts as may be created, and that the grant of judicial power to the courts is an implied prohibition of its assumption by the legislature, except as authorized by the constitution.

The Constitution of the United States declares, in terms, that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, order and establish. Although no similar declaration is contained in the constitution of this State, still it is a recognized principle that in the division of power among the great departments of government, the judicial power has been committed to the judiciary, as the executive power has been committed to the executive department, and the legislative to the legislature, and that body has no power to assume the functions of the judiciary to determine controversies among citizens, or even to expound its own laws so as to control the decisions of the courts in respect to past transactions. (*People v. Supervisors*, 16 N. Y., 432.) To declare what the law shall be, is a legislative power; to declare what it is or has been, is judicial. (*Thompson, J., in Dash v. Van Kleeck*, 7 Johns., 498.) But notwithstanding this general division of powers, certain powers in their nature judicial are, by the express terms of the constitution, vested in the legislature. The power of impeachment is vested in the assembly. Each house is made the judge of the qualification and election of its own members. The power of removal of certain judicial officers for cause is given by the constitution to the senate and assembly, and may involve inquiries judicial in their nature, and by statute certain other officers may be removed by the senate on recommendation of the governor. (1 R. S., 123, sec. 41.) I think it would be going too far to say that every statute is necessarily void which involves action on the part of either

house, partaking in any degree of a judicial character if not expressly authorized by the constitution. Where the statute relates to the proceedings of the legislative body itself, and is necessary or appropriate to enable it to perform its constitutional functions, I can not regard it as such an invasion of the province of the judiciary as should bring it within any implied prohibition of the State constitution. That instrument contains no express provision declaring any of the privileges of the members of either house, except that for any speech or debate in either house, the members shall not be questioned in any other place. Even the privilege of exemption from arrest during the sessions is not declared. No power to keep order or to punish members or others for disorderly conduct, or to expel a member, is contained in the State constitution, as it is in the Constitution of the United States. All these matters are in this State left under the regulations of the statutes, and there is not even express authority to enact such statutes. (1 R. S., chap. 7, tit. 2.) The necessity of the powers mentioned is apparent, and is conceded in all the authorities (see Cooley's Const. Lim., 133), yet it is equally apparent that statutes upon the subject must authorize some action partaking of a judicial character. If that feature is a fatal objection, it annuls all the statutory provisions in which it appears.

The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is one which has from time immemorial been deemed necessary and has been exercised by legislative bodies. In this State it does not rest upon precedent merely, but is expressly conferred by statute (1 R. S., 158, secs. 1, 2), which provides that every chairman of a committee, either of the senate or assembly, or of any joint committee, is authorized to administer oaths to witnesses; and when the committee is by the terms of the resolution appointing it authorized to send for persons and papers, the chairman has the power, under the direction of the committee, to issue compulsory process for the attendance of any witness within the State whom the committee may wish to examine, and to issue commissions for the examination of witnesses out of the State. To subject a witness to punishment as for a contempt, the testimony sought must, as has already been shown, relate to a legislative proceeding. (1 R. S., 154, sec. 13, subd. 4.)

It is difficult to conceive any constitutional objection which can be raised to the provision authorizing legislative committees to take testimony and to summon witnesses. In many cases it may be indispensable to intelligent and effectual legislation to ascertain the facts which are claimed to give rise to the necessity for such legislation, and the remedy required; and, irrespective of the question whether in the absence of a statute to that effect either house would have the power to imprison a recusant witness, I can not yield to the claim that a statute authorizing it to enforce its process in that manner is in excess of the legislative power. To await the slow process of indictment and prosecution for a misdemeanor, might prove quite ineffectual, and necessary legislation might be obstructed, and perhaps defeated, if the legislative body had no other and more summary means of enforcing its right to obtain the required information. That the power may be abused, is no ground for denying its existence. It is a limited power, and should be kept within its proper bounds; and, when these are exceeded, a jurisdictional question is presented which is cognizable in the courts. My conclusion is that subdivision 4 of section 13, 1 Revised Statutes, is constitutional and valid. These views are supported by the decision

of this court in *Wilckens v. Willet* (1 Keyes, 521, 525), where it was held that the House of Representatives of the United States had the power to compel the attendance of witnesses. In that case this court said, per Johnson, J.: "That the power exists admits of no doubt whatever. It is a necessary incident of the sovereign power of making laws, and its exercise is often indispensable to the great end of enlightened, judicious, and wholesome legislation. The power is rather judicial in its nature; but in a legislative body it exists as an auxiliary to the legislative power only," and further at page 526. The power to punish for disobedience and contempt in refusing to attend is a necessary incident to the power to require and compel attendance. (S. C., 4 Ct. of App. Dec., 596; 10 Abb. Pr., 164; 12 id., 319.) It was in deference to this decision, and to the case of *People v. Learned* (5 Hun, 626), that Westbrook, J., sitting in the oyer and terminer, dismissed the writ of habeas corpus in this case, at the same time delivering a learned and able opinion in support of the opposite view, which has been of much service to the court in examining the case. The learned judge treats the case of *Wilckens v. Willet* as based upon the reasoning in *Anderson v. Dunn*, and the latter case as overruled in *Kilbourn v. Thompson*, but a careful examination shows that the case of *Anderson v. Dunn* was overruled in *Kilbourn v. Thompson* only in so far as it recognized a general power in the house to punish for contempts, and the conclusiveness of its judgment; while in regard to the proposition that the power exists for the purpose of compelling the attendance of witnesses as auxiliary to the legislative power, the opinion in *Kilbourn v. Thompson* (p. 189), said in terms that that proposition was one which the court did not propose to decide in the case then before it, as it was able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function. Throughout this Union the practice of legislative bodies, and in this State, the statutes existing at the time the present constitution was adopted, and whose validity has never before been questioned by our courts, afford strong arguments in favor of the recognition of the right of either house to compel the attendance of witnesses for legislative purposes, as one which has been generally conceded to be an appropriate adjunct to the power of legislation, and one which, to say the least, the State legislature has constitutional authority to regulate and enforce by statute.

Two other points are presented on this appeal. One is that the investigation on which the relator was sought to be examined was one which the house was not authorized to institute, and that the case, therefore, falls within the decision in *Kilbourn v. Thompson*, and the other, that the questions which the relator refused to answer were not pertinent or proper. This second point we do not deem it necessary to discuss, because the contempt charged consisted not merely of the relator refusing to answer those questions, but of his refusing to be further examined, or to remain in attendance upon the committee, though informed that his examination was not concluded, and warned not to leave, and that if he left he did so at his peril. Assuming that the statute (subd. 4 of sec. 13) is valid, and that the investigation was a legislative proceeding which the house had authority to institute, we think that by refusing to be further examined, and withdrawing from the presence of the committee without its consent, he brought himself within the terms of subdivision 4 defining as an offense "refusing to attend or be examined as a witness either before the house or a committee to take testimony in legislative proceedings." His refusal to be

further examined, or to remain in attendance, was placed upon the ground that the committee refused to recognize his right to be attended by counsel and act under his advice in answering questions, but we are of opinion that he had no constitutional or legal right to the aid of counsel on such examination. The constitutional provision on the subject is that "in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions." (Const., art. 1, sec. 6.) This provision has been very liberally construed and held to apply to trials before any authority having jurisdiction to try, and in *People ex rel. Mayor, etc., v. Nichols* (79 N. Y., 582), this court held that a police commissioner, appearing before the mayor of the city of New York to show cause why he should not be removed for cause, pursuant to the statute, was entitled to defend by counsel. But here the relator was not on trial, nor was he a party but he was a mere witness called upon to testify in relation to charges against another person, and there was no trial pending against anyone. As well might a witness, examined before a grand jury conducting an investigation of a charge against another person, with a view to his indictment, claim the right to be attended by counsel. We do not think that a mere witness has that right.

We are finally brought to the consideration of the important and more doubtful question, whether the investigation which the committee was conducting was a legislative proceeding which the house was authorized to institute. This is a jurisdictional question, for the statute applies only to such proceedings, and if the house had any authority independently of the statute, that must depend upon the question whether the testimony was sought for the purpose of aiding it in the performance of any of its constitutional functions. An investigation instituted for the mere sake of investigation, or for political purposes, not connected with intended legislation, or with any of the other matters upon which the house could act, but merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, where the legislature had no power to put him or it on trial for the supposed offenses and no legislation was contemplated, but the proceeding must necessarily end with the investigation, would not, in our judgment, be a legislative proceeding, or give to either house jurisdiction to compel the attendance of witnesses or punish them for refusing to attend. Where public institutions under the control of the State are ordered to be investigated, it is generally with the view of some legislative action respecting them, and the same may be said in respect to public officers. In *Kilbourn v. Thompson*, the court said (p. 193): "If any purpose had been avowed to impeach the secretary, the whole aspect of the case would have been changed," but the court held that the recitals in the resolution repelled any such idea, and (pp. 194, 195) that no hint of any intention of final action by Congress on the subject appeared in the resolution, and that on the argument no suggestion had been made of what the House of Representatives, or Congress, could have done in the way of remedying the alleged wrong; and they held that that was simply a fruitless investigation into the personal affairs of individuals, which could result in no valid legislation on the subject to which the inquiry referred, and therefore that the House had no authority in the matter.

In the present case the language of the resolution was as follows:

Whereas grave charges of fraud and irregularity have been made from time to time by the public press and recently by the Union League Club of the city of New York, against Hubert O. Thompson, commissioner of public works in the city of New York; and

Whereas these charges have in the opinion of many persons never been satisfactorily explained or fairly refuted; and

Whereas it is of vital importance to all the taxpayers of the State that the heads of all public departments should be beyond reproach: Therefore be it

Resolved, That the standing committee on the affairs of cities of the senate be and it hereby is, directed and empowered to investigate the department of public works in the city of New York, with power to send for persons and papers, and said committee is hereby authorized to employ a stenographer and such counsel and accountants as it may deem necessary for the thorough discharge of the duties hereby imposed. Such committee to report the result of such investigation, *and its recommendations concerning the same*, to the senate on or before the fifteenth day of April next.

If the resolution had shown upon its face that the only purpose of the investigation was to satisfy the taxpayers of the State as to the truth of the charges, or to relieve the department of public works from reproach, and no further action was contemplated or could be had in the matter by the legislature, the case would fall within the decision in *Kilbourn v. Thompson*. But such was not the case. The department of public works was created and its duties prescribed by a statute of the State, and if the system was so defective as to admit of frauds or irregularities which could be guarded against by further statutory regulations, it was in the power of the legislature to enact them. That some action of this nature was in contemplation is indicated by the provision in the resolution requiring the committee to report the result of its investigation and its recommendations concerning the same. The legislature had no power to remove the commissioner or any officer of the department, and the only action the committee could recommend would be appropriate legislation to prevent a recurrence of the frauds or irregularities, if they were found to exist and to be of such a nature that they could be prevented or rendered more difficult by legislation. We are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended. The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers.

I have reached the conclusion on the whole case that the order of the general term should be reversed and that of the court of oyer and terminer affirmed, except in so far as it remands the relator to the custody of the sheriff, the term of his imprisonment having ended with the session of the legislature.

All concur.

Ordered accordingly.

UNITED STATES SUPREME COURT—OCTOBER TERM, 1891.

DECISION BY JUSTICE BLATCHFORD.

CHARLES COUNSELMAN, APPT., v. FRANK HITCHCOCK, MARSHAL OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

[See S. C. 142 U. S., 547-586; 35 L. ed., 1110.]

[No 1026.]

4. The privilege given by the fifth amendment to the Constitution, that no person shall be compelled in any criminal case to be a witness against himself, extends to a proceeding before a grand jury.
2. In an investigation by a grand jury of alleged violations of the Act of Congress to regulate commerce of February 4, 1887, against a railway company, a person engaged in commission business is privileged under the fifth amendment to the Constitution, from answering as a witness as to whether he had obtained a rate of transportation of grain on any railroad coming from a point outside of the State, less than the tariff or open rate, and questions of a similar character, if he declines to answer on the ground that his answer might tend to criminate him.
3. Section 800 of the Revised Statutes, which provides that the evidence of a person shall not be used against him in any proceeding for a crime or penalty, or forfeiture, does not take away his privilege, given by the Constitution, that he shall not be compelled in any criminal case to be a witness against himself.
4. A witness is protected by the constitutional provision from being compelled to disclose the circumstances of his offense, or the sources from which or the means by which evidence of its commission, or of his connection with it, may be obtained or made effectual for his conviction.
5. Legislation can not abridge a constitutional privilege, and can not replace or supply one, at least unless it is so broad as to have the same extent in scope and effect.
6. No statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States.
7. Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition.
8. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.

[Decided Jan. 11, 1892.]

Appeal from a judgment of the circuit court of the United States for the northern district of Illinois, dismissing a petition for a writ of habeas corpus and discharging the writ. *Reversed and case remanded with direction to discharge the appellant from custody.*

See same case below, 44 Fed. Rep., 268.

The facts are stated in the opinion.

Messrs. John N. Jewett and James C. Carter, for appellant:

The grand jury of the district court was not in the exercise of its proper and legitimate authority in prosecuting the investigations. Hartrant's App. 85 Pa., 433; Justice Field's charge to jury, 2 Sawy., 667-672; *Re Pacific Railway Commission*, 32 Fed. Rep., 241, 255; *United States v. Hill*, 1 Brock., 156; *People v. Kelly*, 24 N. Y., 74-79.

A witness shall not be compelled to make disclosures or give testimony which would tend to criminate himself, or subject him to fines, penalties, or forfeitures. (*Honeywood v. Selwin*, 3 *Atk.*, 276; *Smith v. Reed*, 1 *Atk.*, 526; *Harrison v. Southcote*, 1 *Atk.*, 528; *Wigram Discovery*, 61; *Franco v. Bolton*, 3 *Ves. Jr.*, 368; *Paxton v. Douglas*, 16 *Ves. Jr.*, 239; *Mitford, Pl.*, 194; *Cooper, Eq. Pl.*, 202; *Story, Eq. Pl.*, secs. 524, 575-577, 592; *Rex v. Slaney*, 5 *Car. & P.*, 213; *Cates v. Hardacre*, 3 *Taunt.*, 424; *Rex v. Lewis*, 4 *Esp.*, 225; *Maloney v. Bartley*, 3 *Campb.*, 210; 1 *Stark. Ev.*, 71, 191; *Sir John Friend's Case*, 13 *How. St. Tr.*, 1; *Earl of Macclesfield's Case*, 16 *How. St. Tr.*, 767; 1 *Greenl. Ev.*, sec. 451; *Whart. Crim. Ev.*, sec. 463; *Southard v. Rexford*, 6 *Cow.*, 255; *People v. Mather*, 4 *Wend.*, 229; *Lister v. Boker*, 6 *Blackf.*, 439; *Phelin v. Kenderdine*, 20 *Pa.*, 354; *State v. Bailey*, 54 *Iowa*, 414; *State v. Edwards*, 2 *Nott & McC. L.* 13.)

The proceedings in which Mr. Counselman was called upon to testify was a criminal case (if it was any case) within the meaning of the fifth amendment to the Constitution of the United States; and his admitted relations to the subject of inquiry before the grand jury were such as entitled him to invoke, as he did, the protection of that article of the Constitution. (*Benson v. Cromwell*, 26 *Barb.*, 218; *Cook v. State*, 7 *Blackf.*, 165; *State v. Nowell*, 58 *N. H.*, 314; *Emery's Case*, 107 *Mass.*, 172.)

The protection afforded by the legislature is not the equivalent of the constitutional immunity, and therefore can not be a substitute for it. (*Cullen v. Com.*, 24 *Gratt.*, 624; *Emery's Case*, 107 *Mass.*, 172; *State v. Nowell*, 58 *N. H.*, 314; *Boyd v. United States*, 116 *U. S.*, 616 (29:736).)

The Interstate Commerce Act subjects the offender to an infamous punishment. (*Ex parte Wilson*, 114 *U. S.*, 417 (29:89); *Mackin v. United States*, 117 *U. S.*, 348 (29:909); *Ex parte Bain*, 121 *U. S.* 1 (30:849); *United States v. De Walt*, 128 *U. S.*, 393 (32:845).)

The common law rule is a protection against the compulsory discovery of evidence to disgrace the witness or render him infamous. (*Cook's Case*, 13 *How. St. Tr.*, 334; *Parkhurst v. Lowten*, 3 *Swanst.*, 216; *O'Coigly's Case*, 26 *How. St. Tr.* 1, 351; *Rex v. Hodgson*, *Russ. & R.*, 211; *Republica v. Gibbs*, 3 *Yeates*, 437; *Galbreath v. Eichelberger*, 3 *Yeates*, 517; *People v. Herrick*, 13 *Johns.*, 82.)

If a witness voluntarily, or of his own motion, testifies to any matter which may tend to expose him to criminal prosecution, he is bound to give all the details of the transaction if required. (*State v. Ober*, 52 *N. H.*, 459; *Com. v. Morgan*, 107 *Mass.*, 199; *McGarry v. People*, 2 *Lans.*, 227, 232; *Connors v. People*, 50 *N. Y.*, 240, 242; *Roddy v. Finnegan*, 43 *Md.*, 490, 502; *Norfolk v. Gaylord*, 28 *Conn.*, 309; 1 *Greenl. Ev.*, secs. 251, 251a.)

Messrs. A. X. Parker, assistant attorney-general, and G. M. Lambertson, for appellee:

A witness is not entitled to plead the privilege of silence except "in a criminal case" against himself. (*United States v. Three Tons of Coal*, 6 *Biss.*, 387.)

An investigation before the grand jury is not a criminal case within the meaning of the Constitution. (*United States v. Reed*, 2 *Blatchf.*, 464; *People v. Kelly*, 24 *N. Y.*, 75; *United States v. Brown*, 1 *Sawy.*, 535.)

Section 860 of the Revised Statutes takes away from the witness the right to refuse to answer on the ground that such answer might tend to criminate him. (*People v. Kelly*, 24 *N. Y.*, 74; *People v. Sharp*, 9 *Cent. Rep.*, 699, 107 *N. Y.*, 441; *State v. Quarles*, 13 *Ark.*, 307; *Wilkins v. Malone*,

14 Ind., 153; Archb. Crim. Pr. (7th ed.), 424; Com. v. Knapp, 9 Pick., 496; Bedgood v. State, 115 Ind., 275; La Fontaine v. Southern Underwriters' Asso. 83 N. C., 132; *Ex parte* Rowe, 7 Cal., 184; Higdon v. Heard, 14 Ga., 255; Whart. Crim. Ev., sec. 471; United States v. Brown, 1 Sawy., 531; United States v. McCarthy, 18 Fed. Rep., 87; United States v. Williams 15 Int. Rev. Rec., 199; *Re* Phillips, 2 Am. Law Times, 154.)

The fact that the answer of a witness may give the names of witnesses who will testify against him is no reason for not answering. (*Smith v. People*, 20 Ill. App., 591).

Mr. Justice Blatchford delivered the opinion of the court:

On the 21st of November, 1890, while the grand jury in attendance upon the district court of the United States for the northern district of Illinois was engaged in investigating and inquiring into certain alleged violations, in that district, of an Act of Congress entitled "An act to regulate commerce," approved February 4, 1887, chap. 104 (24 Stat. at L., 379), and the amendments thereto, approved March 2, 1889, chap. 382 (25 Stat. at L., 855), by the officers and agents of the Chicago, Rock Island and Pacific Railway Company, and by the officers and agents of the Chicago, St. Paul and Kansas City Railway Company, and by the officers and agents of the Chicago, Burlington and Quincy Railroad Company, and the officers and agents of various other railroad companies having lines of roads in that district, one Charles Counselman appeared before the grand jury, in response to a subpoena served upon him, and after having been duly sworn, testified as follows:

Q. Your name is Charles Counselman?—A. Yes, sir.

Q. You are the sole member of Charles Counselman & Co.?—A. Yes, sir.

Q. Engaged in the grain and commission business in the city of Chicago?—A. Yes, sir.

Q. Have you been a receiver of grain from the West during the past two years?—A. Yes, sir.

Q. Over what roads did you ship grain received by you during the present summer of 1890?—A. The Rock Island and Burlington, principally.

Q. From what States was most of the grain shipped?—A. From Kansas and Nebraska, I think.

Q. What did your receipts in bushels amount to of corn in the months of May, June, and July, 1890?—A. I have no idea; I could not tell you.

Q. Five hundred thousand bushels a month?—A. I can not tell you.

Q. How many men have you employed during the last year? What is the usual number of men employed in connection with your business?—A. I have, I think, six or seven men in my office.

Q. Have you during the past year, Mr. Counselman, obtained a rate for the transportation of your grain on any of the railroads coming to Chicago, from points outside of this State, less than the tariff or open rate?—A. That I decline to answer, Mr. Milchrist, on the ground that it might tend to criminate me.

Q. During the past year have you received rates upon the Chicago, Rock Island and Pacific, from points outside of the State to the city of Chicago, at less than the tariff rates?—A. That I decline to answer on the same ground.

Q. I will ask you the same question with reference to the Burlington.—A. I answer in the same way.

Q. The same with reference to Atchison.—A. I can't recollect that we have done any business with that road.

Q. I will ask you whether you have during the last year received a rate less than the tariff rate on what is called the "Diagonal" or Stickney road?—A. Not to my knowledge.

Q. Who attends to the freight department of your business?—A. Myself and Mr. Martin.

Q. Have you or the firm of Charles Counselman & Co. received any rebate, drawback, or commission from the Chicago, Rock Island and Pacific Railroad Company, or the Chicago, Burlington and Quincy Railroad Company on the transportation of grain from points in the States of Nebraska and Kansas to the city of Chicago, in the State of Illinois, during the past year, whereby you secured the transportation of said grain at less than the tariff rates established by said railroad?—A. I decline to answer on the same ground.

The grand jurors thereupon filed in said court, on the 22d of November, 1890, their report, signed by their foreman and clerk, certifying to the court the several questions which Counselman so refused to answer. Thereupon the judge of the court granted a rule on Counselman to show cause why he should not answer the said questions; a hearing was had, and the court made an order, on the 25th of November, 1890, which found that the excuses and reasons advanced on behalf of Counselman as to why he should not answer said questions were wholly insufficient, and directed that he appear before the grand jury without delay and there answer the said questions, and also such further questions touching the matter under inquiry by the grand jury, and which should be pertinent to such inquiry, as should be propounded to him by any member of the grand jury, or the district attorney, or any of his assistants.

Counselman was again called before the grand jury, and the same questions, together with other kindred questions, were submitted to him to answer; and he refused to answer them and each of them, for the same reasons. The grand jury, by its report signed by its foreman and clerk, reported to the court that Counselman still refused to answer the questions which he had previously refused to answer, and upon the same grounds, and that there were also propounded to him by the district attorney and the grand jury additional questions, which, and the answers thereto, were as follows:

Q. Do you know whether or not the Chicago, Rock Island and Pacific Railroad Company transported for any person, company, or corporation in the city of Chicago, during the year last past, grain from any point in the States of Nebraska, Kansas, or Iowa to the city of Chicago, in the State of Illinois, for less than the established rates in force on such road at the time of such transportation?—A. I decline to answer, on the ground that my answer might tend to criminate me.

Q. Do you know any person, corporation, or company who has obtained their transportation of grain from points or places in the States of Iowa, Nebraska, or Kansas to the city of Chicago over the Chicago, Rock Island and Pacific Railroad, during the past year, at a rate and price less than the published and legal tariff rate at the time of such shipment?—A. I decline to answer, for the reason that my answer might tend to criminate me.

Q. Do you know whether the Chicago, Rock Island and Pacific Railroad Company, within the past year, has charged, demanded, or received from any person, company, or corporation in the city of Chicago any less rate than the open rate, or rate established by said railroad company, on grain or other property transported by the said railroad company from points in the States of Nebraska, Kansas, and Iowa, to the city of Chicago, in the State of Illinois? If you have such knowledge, give the name of such shipper of whom said rate was charged, demanded, or received, and the amount of such rate and shipments, stating fully all the particulars within your knowledge.—A. I decline to answer, for the reason that my answer might tend to criminate me.

Q. Do you know whether the Chicago, Rock Island and Pacific Railroad Company, during the year A. D. 1890, has paid to any shipper, at the city of Chicago, any rebate, refund, or commission on property and grain transported by such company from points in the States of Kansas, Nebraska, or Iowa, whereby such shipper obtained the transportation of such grain or property from the said points in said States to the city of Chicago, in the State of Illinois, at a less rate than the open or tariff rate, or the rate established by said company? If you have such knowledge, state the amount of such rebates, the drawbacks or commissions paid, to whom paid, the date of the same, and on what shipments; and state fully all the particulars within your knowledge relating to such transaction or transactions.—A. I decline to answer, for the reason that my answer might tend to criminate me.

Thereupon, after a hearing, the court, on November 25, 1890, adjudged Counselman to be in contempt of court, and made an order fining him \$500 and the costs of the proceeding, and directing the marshal to take him into custody and hold him until he should have answered said questions, and all questions of similar import which should be propounded to him by the grand jury, or the district attorney or any assistant dis.

trict attorney, in the presence of such jury, and until he should pay such fine and costs. Under that order he was taken into custody by the marshal and held.

On the 26th of November, 1890, he filed in the circuit court of the United States for the northern district of Illinois a petition setting forth the foregoing facts and praying for a writ of habeas corpus. The petition alleged that the grand jury had no jurisdiction or authority to make the investigation in question, or to submit to him the several questions referred to; that his answers to those questions would tend to incriminate him, and by compelling him to answer them he would be compelled to be a witness against himself in the criminal proceeding and investigation pending before the grand jury, and in any criminal proceedings which might be brought as a result of such investigation, contrary to the provisions of the Constitution of the United States, and especially the fourth and fifth amendments thereof; that the district court had no jurisdiction to compel him to answer said questions; that its order to that effect was contrary to the Constitution and laws of the United States, and was void; that the district court had no jurisdiction so to adjudge him in contempt; that the order imposing a fine upon him and committing him to the custody of the marshal was void, and that he was held in custody without legal right and contrary to the Constitution and laws of the United States.

On the same day the circuit court issued a writ of habeas corpus, returnable forthwith, the return to which by the marshal was that Counselman was held under the order of the district court, made November 25, 1890. The case was heard on November 28, and on December 18, the circuit court, held by Judge Gresham, delivered an opinion (44 Fed. Rep., 268), and made an order adjudging that the district court was in the exercise of its rightful authority in doing what it had done, overruling the motion of Counselman for his discharge, dismissing his petition, remanding him to the custody of the marshal, discharging the writ of habeas corpus, and adjudging against Counselman the costs of the proceedings. He excepted to the order and appealed to this court, and an order was made admitting him to bail pending the appeal.

In the opinion of the circuit court, it was held that, under the fifth amendment to the Constitution, which declares that "no person * * * shall be compelled in any criminal case to be a witness against himself," a person can not be compelled to disclose facts before a court or grand jury which might subject him to a criminal prosecution, or his property to forfeiture; that, under the interstate-commerce law, it is made a criminal offense, punishable by fine and imprisonment, for any officer or agent of a railroad company to grant any shippers of merchandise from one State to another, and for any such shipper to contract for or receive, a rate less than the tariff or open rate; that shippers, as well as the officers, agents, and employes of corporations engaged in the carrying business between States, are made subject to the penalties of the statute; but that, as the protection of section 860 of the Revised Statutes was coextensive with that of the Constitution, Counselman was entitled to no privilege under the Constitution; that if thereafter he were to be prosecuted for the offense, section 860 would not permit his admissions to be proved against him; that his refusal to testify was not a refusal to testify in a proceeding to obtain evidence upon which he might be indicted, but in a proceeding to obtain evidence upon which others might be indicted; and that, although in his testimony he might disclose facts and circumstances which would open up sources of infor-

mation to the Government, whereby it might obtain evidence, not otherwise obtainable, to secure his conviction, yet, if his testimony could not be repeated in any subsequent proceeding against him or his property, he was protected as fully by section 860 as the Constitution intended he should be.

Section 860 is a reenactment of section 1 of the act of February 25, 1868, chapter 13 (15 Stat. at L., 37), which provided as follows:

That no answer or other pleading of any party, and no discovery or evidence obtained by means of any judicial proceeding from any party or witness in this or any foreign country, shall be given in evidence, or in any manner used against such party or witness, or his property or estate, in any court of the United States, or in any proceeding by or before any officer of the United States, in respect to any crime, or for the enforcement of any penalty or forfeiture by reason of any act or omission of such party or witness: *Provided*, That nothing in this act shall be construed to exempt any party or witness from prosecution and punishment for perjury committed by him in discovering or testifying, as aforesaid.

Section 860 provides as follows:

No pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: *Provided*, That this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid.

By section 10 of the interstate-commerce act of February 4, 1887, chapter 104 (24 Stat. at L., 382), as amended by section 2 of the act of March 2, 1889, chapter 382 (25 Stat. at L., 857), unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, is made subject not only to a fine of not to exceed \$5,000 for each offense, but to imprisonment in the penitentiary for not over two years, or to both, in the discretion of the court. By section 12 of the act of 1887 (24 Stat. at L., 383), as amended by section 3 of the act of 1889 (25 Stat. at L., 858), the Interstate Commerce Commission is authorized and required to execute and enforce the provisions of the act, and on the request of the commission, it is made the duty of any district attorney of the United States to whom the Commission may apply, to institute in the proper court, and to prosecute under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of the act and for the punishment of all violations thereof.

It is contended by the appellant that the grand jury of the district court was not in the exercise of its proper and legitimate authority in prosecuting the investigations specifically set out in its two reports to the district court; that those reports could not be made the foundation of any judicial action by the court; that the Interstate Commerce Commission was specially invested by the statute with the authority to investigate violations of the act and charged with that duty; and that no duty in that respect was imposed upon the grand jury, until specific charges had been made.

But in the view we take of this case, we do not find it necessary to intimate any opinion as to that question in any of its branches, or as to the question whether the reports of the grand jury, in stating that they were engaged in investigating and inquiring into "certain alleged violations" of the acts of 1887 and 1889 by the officers and agents of three specific railway and railroad companies, and the officers and agents of various other railroad companies having lines of road in the district (there being no other showing in the record as to what they were investigating and inquiring into) are or are not consistent with the fact that

they were investigating specific charges against particular persons; because we are of opinion that upon another ground the judgment of the court below must be reversed.

It is broadly contended on the part of the appellee that a witness is not entitled to plead the privilege of silence, except in a criminal case against himself; but such is not the language of the Constitution. Its provision is that no person shall be compelled in any criminal case to be a witness against himself. This provision must have a broad construction in favor of the right which it was intended to secure. The matter under investigation by the grand jury in this case was a criminal matter, to inquire whether there had been a criminal violation of the interstate-commerce act. If Counselman had been guilty of the matters inquired of in the questions which he refused to answer, he himself was liable to criminal prosecution under the act. The case before the grand jury was, therefore, a criminal case. The reason given by Counselman for his refusal to answer the questions was that his answers might tend to criminate him, and showed that his apprehension was that, if he answered the questions truly and fully (as he was bound to do if he should answer them all), the answers might show that he had committed a crime against the interstate-commerce act, for which he might be prosecuted. His answers, therefore, would be testimony against himself, and he would be compelled to give them in a criminal case.

It is impossible that the meaning of the constitutional provision can only be that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases; but it is not limited to them. The object was to insure that a person should not be compelled when acting as a witness in any investigation to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard.

It is argued for the appellee that the investigation before the grand jury was not a criminal case, but was solely for the purpose of finding out whether a crime had been committed, or whether any one should be accused of an offense, there being no accuser and no parties plaintiff or defendant, and that a case could arise only when an indictment should be returned. In support of this view reference is made to article 6 of the amendments to the Constitution of the United States, which provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury, to be confronted with the witnesses against him, to have compulsory process for witnesses, and the assistance of counsel for his defense.

But this provision distinctly means a criminal prosecution against a person who is accused and who is to be tried by a petit jury. A criminal prosecution under article 6 of the amendments is much narrower than a "criminal case," under article 5 of the amendments. It is entirely consistent with the language of article 5, that the privilege of not being a witness against himself is to be exercised in a proceeding before a grand jury.

We can not yield our assent to the view taken on this subject by the court of appeals of New York, in *People v. Kelly*, 24 N. Y., 74, 84. The provision of the constitution of New York of 1846, article 1, section 6, was that no person shall "be compelled, in any criminal case, to be a witness against himself." The court, speaking by Judge Denio, said:

The term "criminal case," used in the clause, must be allowed some meaning, and none can be conceived other than a prosecution for a criminal offense. But it must be a prosecution against *him*; for what is forbidden is that he should be compelled to be a witness against himself.

This ruling, which has been followed in some other cases, seems to us, as applied to the provision in the fifth amendment to the Constitution of the United States, to take away entirely its true meaning and its value.

It is an ancient principle of the law of evidence, that a witness shall not be compelled, in any proceeding, to make disclosures or to give testimony which will tend to criminate him or subject him to fines, penalties, or forfeitures. (*Rex v. Slaney*, 5 Car. & P. 213; *Cates v. Hardacre*, 3 Taunt., 424; *Maloney v. Bartley*, 3 Campb., 210; 1 Stark. Ev., 71, 191; *Sir John Freind's Case* (13 How.), St. Tr., 16; *Earl of Macclesfield's Case* (16 How.), St. Tr. 767; 1 Greenl. Ev., sec. 451; 1 Burr's Trial, 244; Whart. Crim. Ev., (9th ed.), sec. 463; *Southard v. Rexford*, 6 Cow., 255; *People v. Mather*, 4 Wend., 229; *Lister v. Boker*, 6 Blackf., 439.)

The relations of Counselman to the subject of inquiry before the grand jury, as shown by the questions put to him, in connection with the provisions of the interstate-commerce act, entitled him to invoke the protection of the Constitution. (*State v. Nowell*, 58 N. H., 314; *Emery's Case*, 107 Mass., 172.)

It remains to consider whether section 860 of the Revised Statutes removes the protection of the constitutional privilege of Counselman. That section must be construed as declaring that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence, or in any manner used against him or his property, or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. It follows that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence or used against him or his property in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.

The constitutional provision distinctly declares that a person shall not "be compelled in any criminal case to be a witness against himself;" and the protection of section 860 is not coextensive with the constitutional provision. Legislation can not detract from the privilege afforded by the Constitution. It would be quite another thing if the Constitution had provided that no person shall be compelled in any criminal case to be a witness against himself, unless it should be provided by statute that criminating evidence, extracted from a witness against his will, should not be used against him. But a mere act of Congress can not amend the Constitution, even if it should engraft thereon such a proviso.

In some States, where there is a like constitutional provision, it has been attempted by legislation to remove the constitutional provision, by declaring that there shall be no future criminal prosecution against the witness, thus making it impossible for the criminal charge against him ever to come under the cognizance of any court, or at least enabling him to plead the statute in absolute bar of such prosecution.

A review of the subject in adjudged cases will be useful.

In *Respublica v. Gibbs*, 3 Yeates, 429, and 4 U. S. 4 Dall. 253 (1: —,) in 1802, the declaration of rights in the constitution of Pennsylvania of 1776, declared, that no man can "be compelled to give evidence against himself," and the same language was found in the constitution of 1790. Under this the supreme court of Pennsylvania held that the maxim that no one is bound to accuse himself extended to cases where the answer might involve him in shame or reproach; and it held to the same effect in *Galbreath v. Eichelberger*, 3 Yeates, 515, in 1803.

In June, 1807, Chief Justice Marshall, in the circuit court of the United States for the district of Virginia, in Burr's trial (1 Burr's Trial, 244), on the question whether the witness was privileged not to accuse himself, said:

If the question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath, that his answer would criminate himself, the court can demand no other testimony of the fact. * * * According to their statement [the counsel for the United States] a witness can never refuse to answer any question, unless that answer, unconnected with other testimony, would be sufficient to convict him of crime. This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible, but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself; and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. The fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom, he is safe; but draw it from thence, and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. What testimony may be possessed, or is attainable, against any individual the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws.

In 1853, in *State v. Quarles*, 13 Ark., 307, the declaration of rights in the constitution of Arkansas of 1836 (art. 2, sec. 11), had declared that in prosecutions by indictment or presentment the accused "shall not be compelled to give evidence against himself." Quarles was indicted under a gaming law, for betting money on a game of chance. A nolle prosequi having been entered as to one Neal, against whom a like prosecution was pending, Neal was sworn as a witness for the State, and informed of the nolle prosequi, and that no indictment for a similar offense would be preferred against him, and was asked whether he had seen Quarles bet money at cards within a specified time. Neal refused to answer the question, alleging that he feared that he would criminate himself thereby. The trial court refused to compel him to answer, and, the jury having found for the defendant, the State appealed. There was a statute of Arkansas which read as follows: "In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against him in any criminal prosecution for the same offense."

The supreme court of Arkansas held, that, although witnesses were not expressed in the terms of the provisions of the bill of rights, yet they were substantially embraced to the full extent of a complete guaranty against self-accusation; and that the privilege of the bill of rights was that a witness should not be compelled to produce the evidence to prove himself guilty of the crime about which he might be called to testify. But it was further held that, by the statute, the legislature

had so changed the rule, by directing that the testimony required to be given should never be used against a witness for the purpose of procuring his conviction for the crime or misdemeanor to which it related, it was no longer necessary for him to claim his privilege in regard to such testimony, in order to prevent its afterwards being used against him; and that the only question was, whether the statutory regulation afforded sufficient protection to the witness, responsive to the new rule and to the constitutional guaranty against compulsory self-accusation. It was held, that the statute sufficiently guarded witnesses from self-accusation, within the meaning of the constitution, to make it lawful for the courts to compel them to testify as to all matters embraced by the provisions of the statute on that subject.

In *Higdon v. Heard*, 14 Ga., 255, in 1853, it was said that the constitution of Georgia declared that "no person shall be compelled in any criminal case to be a witness against himself." In that case the plaintiff had filed a bill in equity praying a discovery as to property which he alleged the defendants had won from him in a game of cards. The bill was demurred to on the ground that the law of the State compelling a discovery of gaming transactions was unconstitutional, because such transactions were criminal, and the statute did not grant an absolute and unconditional release from punishment, and because the defendants could not make the discovery sought without criminating themselves and incurring penalties. The demurrer was overruled by the supreme court of Georgia on the ground that, although all persons were protected by the constitution from furnishing evidence against themselves which might tend to subject them to a criminal prosecution, they received their protection by virtue of an act of Georgia of 1764, because under that act their answers could not be read in evidence against them in any criminal case whatever, being excluded by the constitution.

In *Ex parte Rowe*, 7 Cal., 184, in 1857, the constitution of California of 1849 provided, article 1, section 8, that no person shall "be compelled in any criminal case to be a witness against himself." Rowe had been committed for refusing to answer, under an order of the court, certain questions propounded to him by the grand jury in an examination concerning the disposition of certain moneys taken from the State treasury, on the ground that his answer would disgrace him and would tend to subject him to a prosecution for felony. The supreme court of California, on habeas corpus, considered the construction and constitutionality of the fifth section of an act passed April 16, 1855, which provided that "the testimony given by such witness shall in no instance be used against himself in any criminal prosecution." The court held that the provision of the Constitution was intended to protect the witness from being compelled to testify against himself in regard to a criminal offense; that he could not be a witness against himself unless his testimony could be used against him in his own case; and that the statute gave the witness that protection which was contemplated by the constitution, and therefore he was bound to answer.

In 1860, in *Wilkins v. Malone*, 14 Ind., 153, the constitution of Indiana of 1851, in its bill of rights, article 1, section 14, had declared that "no person in any criminal prosecution shall be compelled to testify against himself." In a suit brought by Malone to recover on a promissory note, the defense pleaded usury and offered to examine Malone as a witness to prove the usury. The plaintiff objected on the ground that such examination would criminate himself, and the objection was sustained. On appeal to the supreme court of Indiana by the defendants it was held that the constitutional provision protected a

person from a compulsory disclosure, in a civil suit, of facts tending to criminate him, whenever his answer could be given in evidence against him in a subsequent criminal prosecution. The court referred to *State v. Quarles supra*, and *Higdon v. Heard, supra*, and to the statute of Indiana (1 Rev. Stat., p. 345, sec. 8), which provided that a person charged with taking illegal interest might be required to answer, but that his answers should not be used against him in any criminal prosecution for usury. The court held that by this statute the constitutional privilege of the party was fully secured to him, although he might disclose circumstances which might lead to a criminal prosecution.

In 1861, in the court of appeals of New York (*People v. Kelly*, 24 N. Y., 74), the constitution of New York of 1846 declared that no person shall "be compelled, in any criminal case, to be a witness against himself." In that case, one Hackley, as a witness before the grand jury on a complaint against certain aldermen for feloniously receiving a gift of money under an agreement that their votes should be influenced thereby in a matter then pending before them in their official capacity, in answer to a question put to him as to what he had done with certain money which he had received, said that any answer which he could give to the question would disgrace him, and would have a tendency to accuse him of a crime, and he demurred to the question. Having been ordered by the court of general sessions of the peace to answer it, he still refused and was adjudged guilty of contempt and put in prison. On a writ of habeas corpus he was remanded into custody by the supreme court, and he appealed to the court of appeals. By chapter 539 of the laws of New York of 1853 it was enacted by section 2 that section 14 should be added to article 2, title 4, chapter 1, part 4, of the Revised Statutes. The act provided that the giving of money to any member of the common council of a city, with intent to influence his action upon any matter which might be brought before him in his official capacity, should be an offense punishable by fine or imprisonment in a State prison, or both; and section 14 provided that every person offending against the statute should "be a competent witness against any other person so offending," and might be compelled to give evidence before any magistrate or grand jury, or in any court in the same manner as other persons, "but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against a person so testifying." A similar provision was contained in chapter 446 of the laws of 1857, in section 52.

The court of appeals considered the question whether those provisions were consistent with the true sense of the declaration of the constitution, and said, speaking by Judge Denio (p. 82):

The mandate that an accused person should not be compelled to give evidence against himself would fail to secure the whole object intended if a prosecutor might call an accomplice or confederate in a criminal offense, and afterwards use the evidence he might give to procure a conviction on the trial of an indictment against him. If obliged to testify, on the trial of the cooffender, to matters which would show his own complicity, it might be said, upon a very liberal construction of the language, that he was compelled to give evidence against himself; that is, to give evidence which might be used in a criminal case against himself. * * * It is, of course, competent for the legislature to change any doctrine of the common law, but I think they could not compel a witness to testify, on the trial of another person, to facts which would prove himself guilty of a crime, without indemnifying him against the consequences, because I think, as has been mentioned, that, by a legal construction, the constitution would be found to forbid it.

But the court went on to say:

If a man can not give evidence upon the trial of another person without disclosing circumstances which will make his own guilt apparent, or at least capable of proof, though his account of the transactions should never be used as evidence, it is the

misfortune of his condition, and not any want of humanity in the law. If a witness objects to a question on the ground that an answer would criminate himself, he must allege, in substance, that his answer, if repeated as his admission, on his own trial, would tend to prove him guilty of a criminal offense. If the case is so situated that a repetition of it on a prosecution against him is impossible, as where it is forbidden by a positive statute, I have seen no authority which holds or intimates that the witness is privileged. It is not within any reasonable construction of the language of the constitutional provision. The term "criminal case," used in the clause must be allowed some meaning, and none can be conceived other than a prosecution for a criminal offense. But it must be a prosecution against *him*; for what is forbidden is that he should be compelled to be a witness against himself. Now if he be prosecuted criminally, touching the matter about which he has testified upon the trial of another person, the statute makes it impossible that his testimony given on that occasion should be used by the prosecution on the trial. It can not, therefore, be said that in such criminal case he has been made a witness against himself, by force of any compulsion used toward him to procure, in the other case, testimony which can not possibly be used in the criminal case against himself.

The court, held, therefore, that Hackley was not protected by the constitution of New York from answering before the grand jury.

In 1871, in *Emery's Case* (107 Mass., 172), article 12 of the declaration of rights in the constitution of Massachusetts of 1780 had declared that no subject shall be "compelled to accuse or furnish evidence against himself." A statute of Massachusetts, of March 8, 1871, chapter 91, entitled "An act for the better discovery of testimony and the protection of witnesses before the joint special committee on the state police," provided as follows:

No person who is called as a witness before the joint special committee on the state police, shall be excused from answering any question or from the production of any paper relating to any corrupt practice or improper conduct of the state police, forming the subject of inquiry by such committee, on the ground that the answer to such question or the production of such paper may criminate or tend to criminate himself, or to disgrace him, or otherwise render him infamous, or on the ground of privilege; but the testimony of any witness examined before said committee upon the subject aforesaid or any statement made or paper produced by him upon such an examination, shall not be used as evidence against such witness in any civil or criminal proceeding in any court of justice: *Provided, however,* That no official paper or record, produced by such witness on such examination, shall be held or taken to be included within the privilege of said evidence so to protect such witness in any civil or criminal proceeding as aforesaid, and that nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying as aforesaid.

Emery was summoned as a witness before the joint special committee of the senate and house of representatives of the general court "to inquire if the State police is guilty of bribery and corruption." Interrogatories were propounded to him by the committee, which he declined to answer. On a report of the facts to the senate, it ordered his arrest for contempt. He was brought before the senate and asked the following question:

Are you ready and willing to answer before the joint special committee, appointed by this senate and the house of representatives of Massachusetts, to inquire if the State police is guilty of bribery and corruption, the following questions, namely: *First.* Whether, since the appointment of the State constabulary force, you have ever been prosecuted for the sale or keeping for sale of intoxicating liquors? *Second.* Have you ever paid any money to any State constable, and do you know of any corrupt practice or improper conduct of the State police? If so, state fully what sums, and to whom you have thus paid money, and also what you know of such corrupt practice and improper conduct.

He answered in writing as follows:

Intending no disrespect to the honorable senate, I answer, under advice of counsel, that I am ready and willing to answer the first question; but I decline to answer the second question, upon the grounds, *first*, that the answer thereto will accuse me of an indictable offense; *second*, that the answer thereto will furnish evidence against me by which I can be convicted of such an offense.

The senate thereupon committed him to the custody of the sergeant-at arms, to be confined in jail for twenty-five days, or until the further order of the senate, unless he should sooner answer the questions. He was imprisoned accordingly, and the case was brought before Judge Wells of the supreme judicial court on a writ of habeas corpus, and was fully argued. It was held under advisement and for conference with the other judges; and in the opinion subsequently delivered by Judge Wells it is stated that that opinion had the approval and unanimous concurrence of all the members of the court. It is said in the opinion, in regard to the second question put to the witness:

It is apparent that an affirmative answer to the question put to him, might tend to show that he had been guilty of an offense, either against the laws relating to the keeping and sale of intoxicating liquors, or under the statute for punishing one who shall corruptly attempt to influence an executive officer by the gift or offer of a bribe. (Gen. Stat., chap. 163, sec. 7.)

In regard to the clause above quoted from the bill of rights, the opinion says:

By the narrowest construction, this prohibition extends to all investigations of an inquisitorial nature, instituted for the purpose of discovering crime, or the perpetrators of crime, by putting suspected parties upon their examination in respect thereto, in any manner, although not in the course of any pending prosecution. But it is not even thus limited. The principle applies equally to any compulsory disclosure of his guilt by the offender himself, whether sought directly as the object of the inquiry, or indirectly and incidentally for the purpose of establishing facts involved in an issue between other parties. If the disclosure thus made would be capable of being used against himself as a confession of crime, or an admission of facts tending to prove the commission of an offense by himself, in any prosecution then pending, or that might be brought against him therefor, such disclosure would be an accusation of himself within the meaning of the constitutional provision. In the absence of regulation by statute, the protection against such self-accusation is secured by according to the guilty person, when called upon to answer as witness or otherwise, the privilege of then avowing the liability and claiming the exemption, instead of compelling him to answer and then excluding his admissions so obtained, when afterwards offered in evidence against him. This branch of the constitutional exemption corresponds with the common-law maxim, *nemo tenetur seipsum accusare*, the interpretation and application of which has always been in accordance with what has been just stated. Broom, Max. (5th ed.), 968; Wingate, Max., 486; Rose. Crim. Ev. (2d Am. ed.), 159; Stark, Ev. (8th Am. ed.), 41, 204, and *notes*; 1 Greenl. Ev., sec. 451 and *notes*.

The opinion then cites the case of *People v. Kelly* (*supra*) as holding that the clause in the constitution of New York of 1846 protected a witness from being compelled to answer to matters which might tend to criminate himself, when called to testify against another party; and also, *People v. Mather*, 4 Wend., 229, as declaring that the exemption in the constitution of New York extended to the disclosure of any fact which might constitute an essential link in a chain of evidence by which guilt might be established, although that fact alone would not indicate any crime. The opinion then proceeds:

The third branch of the provision in the constitution of Massachusetts, "or furnish evidence against himself," must be equally extensive in its application, and, in its interpretation, may be presumed to be intended to add something to the significance of that which precedes. Aside from this consideration, and upon the language of the proposition standing by itself, it is a reasonable construction to hold that it protects a person from being compelled to disclose the circumstances of his offense, the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction, without using his answers as direct admissions against him. For all practical purposes, such disclosures would have the effect to furnish evidence against the party making them. They might furnish the only means of discovering the names of those who could give evidence concerning the transaction, the instrument by which a crime was perpetrated, or even the *corpus delicti* itself. Both the reason upon which the rule is founded and the terms in which it is expressed, forbid that it

should be limited to confessions of guilt, or statements which may be proved in subsequent prosecutions, as admissions of facts sought to be established therein.

The court then proceeds to hold that those constitutional provisions applied to investigations before a legislative body.

Passing then to consider the effect of the statute of 1871, the opinion says:

It follows from the considerations already named, that, so far as this statute requires a witness, who may be called, to answer questions and produce papers which may tend to criminate himself, and attempts to take from him the constitutional privilege in respect thereto, it must be entirely ineffectual for that purpose, unless it also relieves him from all liabilities, for protection against which the privilege is secured to him by the Constitution. The statute does undertake to secure him against certain of those liabilities, to wit, the use of any disclosures he may make, as admissions or direct evidence against him, in any civil or criminal proceeding.

The opinion then refers to the case of *People v. Kelly* (*supra*), and says that that decision was made upon the ground that the terms of the provision of the constitution of New York protected the witness only from being compelled "to be a witness against himself," and did not protect him from the indirect and incidental consequences of a disclosure which he might be called upon to make.

The opinion then says:

The terms of the provision in the constitution of Massachusetts require a much broader interpretation, as has already been indicated; and no one can be required to forego an appeal to its protection, unless first secured from future liability, and exposure to be prejudiced, in any criminal proceeding against him, as fully and extensively as he would be secured by availing himself of the privilege accorded by the Constitution. Under the interpretation already given, this can not be accomplished so long as he remains liable to prosecution criminally for any matters or causes in respect of which he shall be examined, or to which his testimony shall relate. It is not done, in direct terms, by the statute in question; it is not contended that the statute is capable of an interpretation which will give it that effect; and it is clear that it can not and was not intended to so operate. Failing, then, to furnish to the persons to be examined an exemption equivalent to that contained in the Constitution, or to remove the whole liability against which its provisions were intended to protect them, it fails to deprive them of the right to appeal to the privilege therein. The result is, that, in appealing to his privilege, as an exemption from the obligation to answer the inquiries put to him, the petitioner was in the exercise of his constitutional right; and his refusal to answer upon that ground was not, and could not be considered as, disorderly conduct or a contempt of the authority of the body before which he was called to answer. There being no legal ground to authorize the commitment upon which he is held, he must be discharged therefrom.

In *Cullen v. Com.*, 24 Gratt., 624, in 1873, Cullen, when asked before a grand jury to state what he knew of a certain duel, declined to answer, because the answer would tend to criminate him. The hustings court ordered him to answer, and, on his still refusing to do so, fined him and committed him to jail. The case was brought before the court of appeals of Virginia. The bill of rights of the constitution of Virginia of 1870, in section 10 of article 1, provided that no man can "be compelled to give evidence against himself." That provision had existed in the bill of rights of Virginia as far back as June 12, 1776, and of it the court of appeals said that it was the purpose of its framers "to declare, as part of the organic law, that no man should anywhere, before any tribunal, in any proceeding, be compelled to give evidence tending to criminate himself, either in that or any other proceeding;" and that the provision could not be confined "only to cases in which a man is called on to give evidence himself in a prosecution pending against him."

The opinion then cited *People v. Kelly*, and *Emery's Case* hereinbefore referred to, as sustaining its view, and proceeded to consider the effect

of an act of Virginia, passed October 31, 1870, in regard to dueling, which provided as follows:

Every person who may have been the bearer of such challenge or acceptance, or otherwise engaged or concerned in any duel, may be required, in any prosecution against any person but himself, for having fought, or aided or abetted in such duel, to testify as a witness in such prosecution; but any statement made by such person, as such witness, shall not be used against him in any prosecution against himself.

The court held that the effect of the statute was to invade the constitutional right of the citizen, and to deprive the witness of his constitutional right to refuse to give evidence tending to criminate himself, without indemnity, and that the act was, therefore, to that extent, unconstitutional and void. It held further that, before the constitutional privilege could be taken away by the legislature, there must be absolute indemnity provided; that nothing short of complete amnesty to the witness, an absolute wiping out of the offense as to him, so that he could no longer be prosecuted for it, would furnish that indemnity; that the statute in question did not furnish it, but only provided that the statement made by the witness should not be used against him in a prosecution against himself; that, without using one word of that statement, the attorney for the Commonwealth might in many cases, and in a case like that in hand inevitably would, be led by the testimony of the witness to means and sources of information which might result in criminating the witness himself; and that this would be to deprive the witness of his privilege, without indemnity. The judgment of the hustings court was reversed.

In *State v. Nowell*, 58 N. H., 314, in 1878, article 15 of the bill of rights in the constitution of New Hampshire of 1792 declared, that no subject shall "be compelled to accuse or furnish evidence against himself." Nowell refused to testify before a grand jury as to whether, as a clerk for one Goodwin, he had sold spirituous liquors, and whether Goodwin sold them or kept them for sale. He declined to answer on the ground that his evidence might tend to criminate himself. A statute of the State (Gen. Stat. chap. 99, sec. 20) provided as follows:

No clerk, servant, or agent of any person accused of a violation of this chapter, shall be excused from testifying against his principal, for the reason that he may thereby criminate himself; but no testimony so given by him shall, in any prosecution, be used as evidence, either directly or indirectly, against him, nor shall he be thereafter prosecuted for any offense so disclosed by him.

A motion having been made, before the supreme court of New Hampshire, for an attachment against him for contempt for refusing to testify, that court, after quoting the provision in the bill of rights, said:

The common law maxim (thus affirmed by the bill of rights) that no one shall be compelled to testify to his own criminality, has been understood to mean, not only that the subject shall not be compelled to disclose his guilt upon a trial of a criminal proceeding against himself, but also that he shall not be required to disclose, on the trial of issues between others, facts that can be used against him as admissions tending to prove his guilt of any crime or offense of which he may then or afterwards be charged, or the sources from which, or the means by which, evidence of its commission or of his connection with it may be obtained. (*Emery's Case*, 107 Mass., 172, 181.)

In regard to the statute, the court said that the legislature, having undertaken to obtain the testimony of the witness without depriving him of his constitutional privilege of protection, must relieve him from all liabilities on account of the matters which he is compelled to disclose; that he was to be secured against all liability to future prosecution as effectually as if he were wholly innocent; that this would not be accomplished if he were left liable to prosecution criminally for any

matter in respect to which he might be required to testify; that the statute of New Hampshire went further than the statute of Massachusetts considered in *Emery's Case*, because it provided that the witness should not be thereafter prosecuted for any offense so disclosed by him; that the witness had under the statute all the protection which the common law right, adopted by the bill of rights in its common law sense, gave him; that if he should be prosecuted, a plea that he had disclosed the same offense on a lawful accusation against his principle would be a perfect answer in bar or abatement of the prosecution against himself; and that, unless he should testify, the motion for the attachment must be granted.

In 1880, in *La Fontaine v. Southern Underwriters' Association* (83 N. C., 132), the constitution of North Carolina of 1876 had provided, in the declaration of rights (art. 1, sec. 11), that "in all criminal prosecutions every man has the right * * * to * * * not be compelled to give evidence against himself." One Blacknall, as a witness in a hearing before a referee in a civil suit, had refused to answer a question as to his possession of certain books, on the ground that indictments were pending against him, connected with the management of the affairs of the association owning the books, and that his answer to the question might tend to criminate him. The case was heard before an inferior State court, which ruled that he must answer the question. On appeal to the supreme court of North Carolina, it is held that the fair interpretation of the constitutional provision was to secure a person, who was or might be, accused of crime, from making any compulsory revelations which might be used in evidence against him on his trial for the offense; that, as the witness was protected from the consequences of the discovery, and the facts elicited could be given in evidence in no criminal prosecution to which they were pertinent, the plaintiff in the case was entitled to all the information which the witness possessed, whether it did or did not implicate the witness in a fraudulent transaction; that the inquiry could not be evaded upon any ground of the self-criminating answer which might follow, although the answers of the witness could not be used against him in any criminal proceeding whatever; and that his constitutional right not to "be compelled to give evidence against himself" would be maintained intact and full.

In *Temple v. Com.*, 75 Va., 892, in 1881, the same section 10 of article 1 of the bill of rights of the constitution of Virginia of 1870 that was considered in *Cullen v. Com.* (*supra*), was in force. An indictment had been found by a grand jury, on the evidence of Temple, against one Berry for setting up a lottery. On the trial of Berry before the petit jury, Temple refused to testify, on the ground that by so doing he would criminate himself; and for such refusal he was fined and imprisoned for contempt by the hustings court. The case was taken to the court of appeals by writ of error. The court cited with approval *Cullen's Case* (*supra*), and held that it was applicable. It appeared that in the hustings court, the attorney for the Commonwealth was asked whether any prosecution was pending against Temple in that court, or whether it was the intention of such attorney to institute a proceeding against Temple for being concerned in a lottery, to both of which questions he replied in the negative.

The court of appeals held that Temple had a right to stand upon his constitutional privilege, and not to trust to the chances of a further prosecution; that the court could offer him no indemnity that he would not be further prosecuted, nor could the attorney for the Commonwealth; that Temple had a right to remain silent whenever any ques-

tion was asked him, the answer to which might tend to criminate himself; that the great weight of authority in the United States was in favor of the rule that, when a witness on oath declared his belief that his answer would tend to criminate himself, the court could not compel him to answer, unless it was perfectly clear, from a careful consideration of all the circumstances in the case, that the witness was mistaken, and that the answer could not possibly have such a tendency; and that the hustings court had no right to compel Temple to answer the question propounded to him, and to fine and imprison him for his refusal to answer it. The court further held, that the statute of the State which provided that no witness giving evidence in a prosecution for unlawful gaming should ever be proceeded against for any offense of unlawful gaming committed by him at the time and place indicated in such prosecution, did not apply to the case then in hand, because setting up a lottery was not within the statute against unlawful gaming. The judgment of the hustings court was reversed.

In *Boyd v. United States*, 116 U. S., 616 (29:746), in 1886, this court, in considering the fifth amendment to the Constitution of the United States, which declares that no person "shall be compelled in any criminal case to be a witness against himself," and the fourth amendment, which declares that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, said, speaking by Mr. Justice Bradley (p. 631):

And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it can not abide the pure atmosphere of political liberty and personal freedom.

It was further said (p. 633):

We have already noticed the intimate relation between the two amendments. They throw great light on each other. For the "unreasonable searches and seizures" condemned in the fourth amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the fifth amendment; and compelling a man "in a criminal case to be a witness against himself," which is condemned in the fifth amendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the fourth amendment. And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms. * * * As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law are of this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the fourth amendment of the Constitution, and of that portion of the fifth amendment which declare that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself within the meaning of the fifth amendment to the Constitution, and is the equivalent of a search and seizure—and an unreasonable search and seizure—within the meaning of the fourth amendment. Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.

In that case, the fifth section of the act of June 22, 1874 (18 Stat. at L., 187), which authorizes the court in revenue cases to require the defendant or claimant to produce his private papers in court, or else the allegations of the Government's attorney would be taken as confessed, was held to be unconstitutional and void, as applied to a suit for a penalty or to establish a forfeiture of the goods of the party, because it was repugnant to the fourth and fifth amendments to the Constitution; and it was held that a proceeding to forfeit the goods was a criminal case within the meaning of the fifth amendment. Mr. Justice Miller, in the concurring opinion of himself and Chief Justice Waite in the case, agreed that it was a criminal one, within the meaning of the fifth amendment, and that the effect of the act of Congress was to compel the party on whom the order of the court was served to be a witness against himself.

In *People v. Sharp*, 107 N. Y. 427, 9 Cent. Rep. 699, in 1887, the court of appeals of New York had under consideration the provision of article 1, section 6, of the constitution of New York of 1846, that no person shall "be compelled, in any criminal case, to be a witness against himself," and the provision of section 79 of the Penal Code of New York, title 8, chapter 1, in regard to bribery and corruption, which was in these words:

A person offending against any provision of any foregoing section of this code relating to bribery, is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the giving of a bribe which has been accepted, shall not thereafter be liable to indictment, prosecution, or punishment for that bribery, and may plead or prove the giving of testimony accordingly, in bar of such an indictment of prosecution.

Sharp and others were indicted for bribing a member of the common council, and Sharp was tried separately. It was proved that he had been examined as a witness before a committee of the State senate, and there gave testimony which the prosecution claimed was evidence of his complicity in the crime, and that testimony was offered in evidence by the prosecution. The testimony had been given under the compulsion of a subpoena, and was admitted at the trial, against the objection that the disclosures before the senate committee were privileged. The court of appeals held that section 79 of the Penal Code made the constitutional privilege inapplicable, because it indemnified or protected the party against the consequences of his previous testimony. The court cited with approval the case of *People v. Kelly* (*supra*).

In *Bedgood v. State*, 115 Ind., 275, 1888, the supreme court of Indiana had under consideration the provision of article 1, section 14, of the bill of rights of the constitution of Indiana of 1851, which provides that "no person in any criminal prosecution shall be compelled to testify against himself," and the provisions of section 1800 of the revised statutes of Indiana of 1881, to the effect that testimony given by a witness should not be used in any prosecution against him. On a trial before a petit jury in a criminal case against others, a woman had refused to answer a question on the ground that the answer might criminate her. The supreme court held that, as the statute prohibited her testimony from being used against her, it completely protected her, and the judgment was reversed because the trial court had erroneously refused to require her to answer the question.

This review of the cases above referred to shows that in the constitutions of Georgia, California, and New York the provision is identically

or substantially that of the Constitution of the United States, namely, that no person shall "be compelled in any criminal case to be a witness against himself," while in the constitutions of Pennsylvania, Arkansas, Indiana, Massachusetts, Virginia, New Hampshire, and North Carolina it is different in language, and to the effect that, "no man can be compelled to give evidence against himself," or that, in prosecutions, the accused "shall not be compelled to give evidence against himself," or that "no person in any criminal prosecution shall be compelled to testify against himself," or that no person shall be "compelled to accuse or furnish evidence against himself," or that no man can "be compelled to give evidence against himself," or that, in all criminal prosecutions, "every man has the right to not be compelled to give evidence against himself."

Under the constitutions of Arkansas, Georgia, California, Indiana, New York, New Hampshire, and North Carolina it was held that a given statutory provision made it lawful to compel a witness to testify, while in Massachusetts and Virginia it was held that the statutory provisions were inadequate, in view of the constitutional provision. In New Hampshire and in New York, under the Penal Code, it was held that the statutory provisions were sufficient to supply the place of the constitutional provision, because, by statute, the witness was entirely relieved from prosecution.

But, as the manifest purpose of the constitutional provisions, both of the States and of the United States, is to prohibit the compelling of testimony of a self-criminating kind from a party or a witness, the liberal construction which must be placed upon constitutional provisions for the protection of personal rights would seem to require that the constitutional guaranties, however differently worded, should have as far as possible the same interpretation; and that where the constitution, as in the cases of Massachusetts and New Hampshire, declares that the subject shall not be "compelled to accuse or furnish evidence against himself," such a provision should not have a different interpretation from that which belongs to constitutions like those of the United States and of New York, which declare that no person shall be "compelled, in any criminal case, to be a witness against himself." Under the rulings above referred to by Chief Justice Marshall and by this court, and those in Massachusetts, New Hampshire, and Virginia, the judgment of the circuit court in the present case can not be sustained. It is a reasonable construction, we think, of the constitutional provision, that the witness is protected "from being compelled to disclose the circumstances of his offense, the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction, without using his answers as direct admissions against him." (Emery's Case, 107 Mass., 172, 182.)

It is quite clear that legislation can not abridge a constitutional privilege, and that it can not replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. It is to be noted of section 860 of the Revised Statutes that it does not undertake to compel self-criminating evidence from a party or a witness. In several of the State statutes above referred to, the testimony of the party or witness is made compulsory, and in some either all possibility of a future prosecution of the party or witness is distinctly taken away, or he can plead in bar or abatement the fact that he was compelled to testify.

We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating questions put to him, can have the effect of supplanting the privilege con-

ferred by the Constitution of the United States. Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates. In this respect, we give our assent rather to the doctrine of *Emery's Case*, in Massachusetts, than to that of *People v. Kelly*, in New York, and we consider that the ruling of this court in *Boyd v. United States*, 116 U. S., 816 (29: 746) supports the view we take. Section 860, moreover, affords no protection against that use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party.

It is contended on the part of the appellee that the reason why the courts in Virginia, Massachusetts, and New Hampshire have held that the exonerating statute must be so broad as to give the witness complete amnesty, is that the constitutions of those States give to the witness a broader privilege and exemption than is granted by the Constitution of the United States, in that their language is that the witness shall not be compelled to accuse himself, or furnish evidence against himself, or give evidence against himself, and it is contended that the terms of the Constitution of the United States, and of the constitutions of Georgia, California, and New York are more restricted. But we are of opinion that, however this difference may have been commented on in some of the decisions, there is really, in spirit and principle, no distinction arising out of such difference of language.

From a consideration of the language of the constitutional provision, and of all the authorities referred to, we are clearly of opinion that the appellant was entitled to refuse, as he did, to answer. *The judgment of the circuit court must, therefore, be reversed, and the case remanded to that court with a direction to discharge the appellant from custody, on the writ of habeas corpus.*

UNITED STATES SUPREME COURT—OCTOBER TERM, 1893.

DECISION BY JUSTICE HARLAN.

THE INTERSTATE COMMERCE COMMISSION, Appt., v. W. G. BRIMSON et al.

[See S. C. 154 U. S., 447, 38 L. ed.—.]

No. 883.

Act to regulate commerce—power of Congress—appropriate means—judiciary—compelling testimony before Interstate Commerce Commission—due process of law.

1. The twelfth section of the act of February 4, 1887, as amended in 1889 and 1891, is constitutional and valid, so far as it authorizes or requires the circuit courts of the United States to use their process in aid of inquiries before the Interstate Commerce Commission.
2. Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed.
3. Congress may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to carry into effect and accomplish the objects of, a power given to it by the Constitution.
4. The judiciary can only inquire whether the means devised by Congress in the execution of a power granted are forbidden by the Constitution.
5. A proceeding to compel the attendance of a witness before the Interstate Commerce Commission, or to require him to answer questions put to him, or to compel the production of books, documents or papers in his possession is a case of which, under the Constitution, a court of the United States may take cognizance.
6. In matters of contempt, a jury is not required by "due process of law;" courts possess the power to punish for contempt.

[Argued April 16, 17, 1894. Decided May 26, 1894.]

Appeal from a judgment of the circuit court of the United States for the northern district of Illinois, dismissing a petition filed by the Interstate Commerce Commission under the act of Congress entitled "An act to regulate commerce" of February 4, 1887, and amended by the acts of March 2, 1889, and February 10, 1891, invoking the aid of the circuit court in requiring the attendance and testimony of witnesses and the production of documents, books, and papers, in a case before the said Interstate Commerce Commission. *Reversed, and cause remanded for further proceedings.* (See same case below, 53 Fed. Rep., 476, 480.)

Messrs. Lawrence Maxwell, jr., Solicitor-General, and Geo. F. Edmunds, for appellant.

NOTE.—As to power of Congress to regulate commerce, see note to *Gibbons v. Ogden*, 6: 23, and to *Brown v. Maryland*, 6: 678.

As to tonnage tax, see note to *Inman S. S. Co. v. Tinker* 24: 118.

As to interstate commerce, regulation of, power of Congress, how far exclusive, see note to *Gloucester Ferry Co. v. Pennsylvania*, 29: 158.

As to power of Congress to control commerce, State statutes, when valid as being a regulation of commerce, drummers, vessels, railways, telegraph companies, State tax on commerce, when invalid, see note to *Harmon v. Chicago*, 37: 216.

As to powers of court to punish for contempt, see note to *Ex parte Robinson*, 22: 205.

That there is no review of decree punishing for contempt, limits to rule, see note to *New Orleans v. New York Mail S. S. Co.*, 22: 354.

As to what is "due process of law," see note to *Pearson v. Yewdall*, 24: 436.

MEM.—References in note are to U. S. Repts. L. ed.

The Constitution declares that Congress shall have power "to regulate commerce with foreign nations and among the several States."

The power to regulate commerce necessarily and confessedly includes the power to provide all means fairly adapted to the complete exercise of the power.

One (and perhaps the most salutary of all) of these means is the establishment of a national, official body, by whatever name styled, to put into execution the principles and regulations declared by law, and in so doing as essentially and indispensably a part thereof, to investigate the course and practice of interstate commerce as carried on by whomsoever engaged in it, and so to ascertain whether or not it is carried on according to the requirements of law.

Congress possessed the power of making it the legal duty of every such carrier and of every other person having knowledge of the subject under consideration, to appear, on due summons, before the Commission and produce the papers and give the evidence it or he might possess legitimately relating to the matter so lawfully under consideration.

Congress, having imposed it, could provide the natural and necessary means of compelling performance, as well as punishing nonperformance of such duty.

The natural, necessary, and only lawful means of compelling the performance of any legal duty (except payment of taxes and military service, etc.) is by the exertion of the judicial power. This is done by an application to a court, in whatever mode or form the law may provide, by the party entitled to have the duty performed, against the party complained of.

Such a proceeding as that in this case by a party having a statutory standing as complainant against a party who has refused to perform a duty that a valid statute required him to perform is, within the very letter as well as the spirit of the Constitution, a "case" and a "controversy," which the judicial power was established to hear, try, and determine.

It is a due and constant exercise of the judicial power to command the performance of any duty that any person or corporation is legally bound to perform, either to the public, or to an individual, and to do it under such modes and forms of procedure as the legislative power shall have prescribed. If Congress has no power to impose such a duty the judiciary can neither compel a performance nor punish a nonperformance. But if Congress has and exercises the power to impose such a duty, no matter to whom it may be imputed, the judiciary is bound (if the law has so provided) to hear the complaint of the party seeking performance, and to decide whether the other party owes the duty demanded, and, if the duty is found to exist, to decree its performance.

This is both a "case" and a "controversy" arising under the laws of the United States, and to which the United States were, in substance and effect, parties. The controversy had two opposing parties legally interested in it. It was brought into court by one of them, praying redress and the performance of a legal obligation against the other. The court had been given jurisdiction of that very class of cases and controversies. The mode of procedure was provided for by law.

The admitted jurisdiction of the courts to hear and determine complaints by the Commission for disobedience of their final orders upon carriers is of precisely the same legal character as the jurisdiction here invoked.

It is the province of the legislative and not of the judicial power to say what the form of procedure and remedy shall be in every case of

an officer or person who has refused to do that which a valid law has required him to do, subject of course to the provisions requiring jury trial, etc., not applicable here. In cases like the present one, the legislative power has declared that the procedure shall be of the character employed in this case.

The judiciary can not constitutionally compel affirmative obedience to any part of the interstate-commerce acts if it can not do it as to this part of them. (*Hayburn's Case*, 2 U. S. (2 Dall.), 409 (1: 437); *Osborn v. Bank of United States*, 22 U. S. (9 Wheat.), 818 (6: 223); *United States v. Ferreira*, 54 U. S. (13 How.), 45 (14: 44); *United States v. Ritchie*, 58 U. S. (17 How.), 525 (15: 236); *Den v. Hoboken Land & Imp. Co.*, 59 U. S. (18 How.), 272 (15: 372); *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.*, 2 Inters. Com. Rep. 351, 37 Fed. Rep., 613; *Ex parte Fassett*, 142 U. S., 479 (35: 1087); *Passavant v. United States*, 148 U. S., 214 (37: 426); *Fong Yue Ting v. United States*, 149 U. S., 698 (37: 905); *Re Pacific R. Com.*, 32 Fed. Rep. 241; *Canal & L. Comrs. v. Willamette Transp. & L. Co.*, 6 Or., 219; *People v. State Ins. Co.*, 19 Mich., 392; *Re Lippman*, 3 Ben., 95; *Re Meador*, 1 Abb. (U. S.), 317; *Re McLean*, 37 Fed., Rep., 648.)

As the decree of the court below was based solely upon the question of the power of the court to act at all, the matter of the relevancy of the questions asked and of the papers called for is not open for consideration here. (*Passavant v. United States*, 148 U. S., 214 (37: 426); circuit court of appeals act, March 5, 1891, secs. 5, 6.)

But if the propriety of the action of the Commission is now open for review, then it is insisted that the questions refused to be answered and the papers refused to be produced were relevant to the subject-matter under consideration by the Commission.

If these companies were engaged in interstate commerce there was nothing connected with any part of their affairs that the commission had not a right and was not bound, in case of complaint, to know, not only who were the owners of their stock and the controllers of their roads, but whether they or their officers were owners of interested in the steel company, whose interstate business they were transacting. The hearing had just begun. The statements of these officers were not conclusive, and had the questions been answered, and the books produced, their denials might have been overcome perhaps by their own evidence. But the examination was suspended at the threshold by the necessity of applying to the court in the manner before stated.

Perfectly analogous to the jurisdiction contended for here are many instances of immemorial jurisdiction where the principal and final matters were not before the court called upon to act. Among these are:

Injunctions to stay waste, etc., pending suits at law to try titles (*Erhardt v. Boaro*, 113 U. S., 537 (28: 1116); *Kinsler v. Clarke*, 2 Hill, Eq., 617); certiorari (Story, Eq. Pl., sec. 18); bills to perpetuate testimony (Story, Eq. Jur., sec. 1512). See also Act of 1787, sec. 30; bills for examination of witnesses (Story, Eq. Pl., sec. 19; and see Act of 1827, sec. 2); bills of discovery (Story, Eq. Pl., sec. 19); and the judicial course on letters rogatory. 10 Stat. at L., 630; 12 Stat. at L., 769; Rev. Stat., 4071; *Nelson v. United States*, Pet. C. C., 235; *Mexico v. Arrangois*, 5 Duer, 634; *Kuehling v. Leberman*, 9 Phila., 160; *Re Spanish Consul at New York*, 1 Ben., 225.

No court of the United States can exercise any other than judicial power, and it can not exercise judicial power without having a "case" or a "controversy" before it. How, then, can all these courts exercise power in all these varied instances otherwise than under the very principle before stated, that is, that it is the exertion of judicial power to pass

and act upon the application of a party demanding relief in respect to another who is bound by law to do the thing asked, and that such an application in the form prescribed by law is a "case" and if disputed is a "controversy?"

Messrs. E. Parmalee Prentice, James C. Hutchins and Charles S. Holt, for appellees:

This investigation was in its nature judicial, and authority to make it could not lawfully be conferred by Congress upon the Interstate Commerce Commission, which is in its nature an administrative and not a judicial body. (1 Kent, Com., 304; *United States v. Ferreira*, 54 U. S., 13 How., 45; 14: 44.)

The Interstate Commerce Commission is an administrative body. *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.*, 2 Inters. Com. Rep. 351, 37 Fed. Rep., 567. The inquiry which the Commission was pursuing was judicial.

It is not one of the constitutional means included in the power to regulate interstate commerce to delegate to a nonjudicial body the duty of inquiring whether such commerce is carried on according to the "requirements of law." The proposition thus laid down by counsel is that Congress may authorize compulsory inquiry by a nonjudicial body for the purpose of discovering and punishing past violations of law. A more startling proposition has seldom been asserted in this court. These violations are, if anything, crimes, punishable by heavy penalties of fine and imprisonment, and the investigation of the question whether crime has been committed is not an administrative act within any possible construction of the language. Such an inquiry is a function of the courts, with their historic appropriate machinery of the grand jury. (Com. v. Jones, 10 Bush, 725; *Cooley*, Const. Lim. (5th ed.), 109, 110.) Whether we look, therefore, at the prescription of duty, or at the enforcement of duty, we find no place for the operation of the Commission in such an investigation as this. (*Re Pacific R. Com.*, 32 Fed. Rep., 251.)

The Commission is in no respect a judicial body. Under our system of government such a body can not conduct such an inquiry. (*Kilbourn v. Thompson*, 103 U. S. 168 (26: 377); *Boyd v. United States*, 116 U. S. 616; 29: 746.) The power of visitation is a power applicable only to ecclesiastical and eleemosynary corporations. The visitation of civil corporations is by the Government itself, through the medium of the courts of justice. (2 Kent, Com. (13th ed.), 300.) The State has authority to interfere to ascertain whether or not the course pursued by a civil corporation is in excess of corporate power. (*Waterman, Corp.* 668; *Atty. Gen. v. Utica Ins. Co.*, 2 Johns, Ch. 371.) Even if Congress could empower the Commission to make this investigation, still it could not empower this court to grant the order applied for; because, whether the character of the inquiry is judicial or nonjudicial, the question does not here arise in a case or controversy as required by the Constitution.

The Federal Constitution limits the judicial power of the United States and only "cases" and "controversies" can find an entrance into the Federal courts. (*Chisholm v. Georgia*, 2 U. S. (2 Dall.), 432, 1: 435.)

A case, in the sense of this clause of the Constitution, arises when some subject touching the Constitution, laws or treaties of the United States is submitted to the courts by a party who asserts his rights in the form prescribed by law. (*Story*, Const., sec. 1646; *Osborn v. United States*, 22 U. S. (9 Wheat.), 745 (6: 205); *Smith v. Adams*, 130 U. S., 173

(32: 897); *Hayburn's Case*, 2 U. S. (2 Dall.), 409 (1: 436); *United States v. Todd*, 54 U. S. (13 How.), 52 (14: 47) note.)

The language of the act does not make it the duty of any carrier or other person to furnish information, but simply confers authority upon the Commission to inquire into the management of the business of all common carriers subject to the provisions of the act. (*United States v. Mitchell*, 58 Fed. Rep., 993; *United States v. Hudson*, 11 U. S. (7 Cranch), 42 (3: 259); *United States v. Lancaster*, 2 McLean, 431.)

But even if it were held that there is an implied "duty" as broad as the "right conferred by the act," that is not broad enough to cover the duty here insisted on.

If the duty exists it must be one that is expressly or by implication contained in and defined by the act of Congress.

The only possible definition of the duty asserted by counsel for the Commission in this case is that it consisted in furnishing to the Commission all books, papers, and information which the Commission might see fit to ask for. This is simply arming the Commission with unlimited powers of inquisition. Under the guise of duty it empowers the Commission to create as many separate duties as it sees fit, and the very act of creation is a legislative act. If Congress delegate power in these broad terms, it can delegate any power whatever.

The application to the court is not for a decision whether the information is necessary, but for the enforcement of a duty which is assumed by the hypothesis to have been previously created. It must then have been either created by the Commission, acting as a legislature, or adjudged by the Commission, acting as a court. Either hypothesis is fatal.

When the Commission asks the question either a duty to answer is thereby finally established or it is not. If it is finally established, then the act of the Commission is a legislative act, which is in the first place beyond the power of the Commission; but if valid, the court has no power to do anything except enforce it or punish its violation, without inquiry as to the materiality or necessity of the information sought. This makes the court the mere ministerial agent of the Commission.

If the duty is not established finally, but only provisionally (i. e., subject to the court's inquiry as to its propriety and necessity), then the court is called upon to take part in a legislative act, which is wholly beyond its competency; and what bears especially on the point now in hand, the supposed "case or controversy" consisting of the assertion on one side, and denial on the other, of an established duty, becomes a mere advisory inquiry whether it is lawful and expedient that a duty shall be established.

The provision of section 12 of the interstate-commerce act, under which this proceeding was taken, is that the Commission "may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, documents," etc.

This application is stamped from the outset with the marks of its purely ancillary character.

It is only by splitting up the investigation into minute fragments that the Commission can find any part of it to submit to the court for judicial action. If it had been attempted to carry on this entire investigation in the first instance by petition to the court, it would not have been possible to pretend that it made a case or controversy of which the court could take cognizance. A part can not be greater than the whole, and the Commission can not set in motion the judicial power by

dismembering their case and bringing a small fragment into court to be decided and returned to them for such use as they may choose to make of it.

Moreover, if each refusal of a witness to answer a question in such an investigation may be made the subject of a separate judicial inquiry, under the guise of enforcing a duty, there may be as many separate controversies as there are questions. It follows also that each controversy thus submitted to the court gives the right of appeal to the defeated party. Thus, the extraordinary spectacle would be presented of this court or of the court of appeals deciding in succession a series of objections to evidence arising in a controversy carried on before another and nonjudicial tribunal. It is a perversion alike of language and of thought to speak seriously of this as a proper method of judicial action.

The courts have uniformly and repeatedly refused to recognize as "cases or controversies" questions arising at a preliminary stage before the judicial power is called into exercise, or subject to revision by another department after the courts have done with them. (*United States v. Ritchie*, 58 U. S. (17 How.), 525; 15: 236; *Election Suprs. Case*, 114 Mass., 247; *Ex parte Siebold*, 100 U. S., 399; 25: 727.)

The court will look at the nature of the right, and not merely at the form in which it is asserted, to determine whether there is or is not a "case" for judicial consideration. (*Den v. Hoboken Land and Imp. Co.*, 59 U. S. (18 How.), 282-284; 15: 276, 377.)

The case at bar is fatally defective, both as to substance and form, and can by no possibility gain any standing in a Federal court.

The application is an attempt to borrow the process of contempt for use in an administrative inquiry, and it has no other substantial purpose.

The right of trial by jury as guaranteed by the Constitution forbids the creation of new methods of procedure in cases involving private rights. (*Scott v. Neely*, 140 U. S., 106; 35: 358; *Puterbaugh v. Smith*, 131 Ill., 199.)

The judicial process of contempt is not a legitimate method for the enforcement of executive or legislative command. (*Kilbourn v. Thompson*, 103 U. S., 168; 26: 377; *Langenberg v. Decker*, 16 L. R. A., 108; 131 Ind., 478; *Wyatt v. People*, 17 Colo., 252.)

The mere ownership of the stock in the switching roads by the steel company would not constitute a violation of the interstate-commerce law. (*Pullman Palace Car Co. v. Missouri Pac. R. R. Co.*, 115 U. S., 587; 29: 499.)

Mr. Justice Harlan delivered the opinion of the court:

This appeal brings up for review a judgment rendered December 7, 1892, dismissing a petition filed in the circuit court of the United States on the 15th day of July, 1892, by the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and amended by the acts of March 2, 1889, and February 10, 1891. (24 Stat. at L., 379, chap. 104; 25 Stat. at L., 855, chap. 382; 26 Stat. at L., 743, chap. 128; 1 Rev. Stat. Supp., 529, 684, 891.)

The petition was based on the twelfth section of the act authorizing the Commission to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses, and the production of documents, books, and papers.

The circuit court held that section to be unconstitutional and void, as imposing on the judicial tribunals of the United States duties that

were not judicial in their nature. In the judgment of that court, this proceeding was not a case to which the judicial power of the United States extended. (4 Inters. Com. Rep., 315; 53 Fed. Rep., 476, 480.)

The provisions of the interstate-commerce act have no application to the transportation of passengers or property, or to the receiving, delivering, storing, or handling of property wholly within one State and not shipped to a foreign country from any State or Territory, or from a foreign country to any State or Territory. But they are declared to be applicable to carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

The term "railroad," as used in the act, includes all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" includes all instrumentalities of shipment or carriage.

All charges made for services rendered or to be rendered in the transportation of passengers or property, as above stated, or in connection therewith, or for the receiving, delivering, storing, or handling of such property, are required to be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. (Sec. 1.)

Any carrier subject to the provision of the act, directly or indirectly, by special rate, rebate, drawback, or other device, charging, demanding, collecting, or receiving from any person or persons a greater or less compensation for services rendered or to be rendered, in the transportation of passengers or property, than it charges, demands, collects, or receives for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, is to be deemed guilty of unjust discrimination, which the act expressly declares to be unlawful. (Sec. 2.)

So it is made unlawful for any such carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or to any particular description of traffic, or to subject any particular person, company, firm, corporation, or locality, or any particular kind of traffic, to undue or unreasonable prejudice or disadvantage in any respect. And carriers subject to the provisions of the act are required to afford, according to their respective powers, all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and not to discriminate in their rates and charges between such connecting lines; but this regulation does not require a carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business. (Sec. 3.)

It is made unlawful for any carrier subject to the provisions of the act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this does not authorize the charging and receiving as great compensation for a short as for a longer distance. Upon application to the Commission, the carrier may in special cases, after investigation by that body, be authorized to charge less for longer than for short distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which the carrier may be relieved from the operation of this section. (Sec. 4.)

It is also made unlawful for any carrier subject to the provisions of the act to enter into any contract, agreement, or combination with any other carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid each day of its continuance is deemed a separate offense. (Sec. 5.)

Another section of the act provides for the printing and posting by carriers of their rates, fares, and charges for the transportation of passengers and property, including terminal charges, classifications of freight, and any rules or regulations affecting such rates, fares, and charges, including the rates established and charged for freight received in this country to be carried through a foreign country to any place in the United States; forbids any advance or reduction in such rates, fares, and charges, so established and published, except upon public notice, of which changes the Commission shall be notified; requires every carrier to file with the Commission copies of all contracts, agreements, or arrangements with other carriers relating to any traffic affected by the provisions of the act, as well as copies of schedules of joint tariffs of rates, fares, or charges for passengers and property over continuous lines or routes operated by more than one carrier; declares it to be unlawful for any carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time; authorizes in addition to the penalties prescribed for neglect or refusal to file or publish rates, fares, and charges, a writ of mandamus to be issued by any circuit court of the United States in the judicial district wherein the principal office of the carrier is situated, or wherein such offense may be committed, and if such carrier be a foreign corporation, in the judicial circuit wherein it accepts traffic, and has an agent to perform such service, to compel compliance with the above provisions of the section relating to schedules of rates, fares, and charges—such writ to issue in the name of the people of the United States, at the relation of the commissioners appointed under the provisions of the act, and the failure to comply with its requirements being punishable as and for a contempt; and empowers the commissioners, as complainants, to apply, in any such circuit court of the United States, for a writ of injunction against the carrier, to restrain it from receiving or transferring property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between

ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of the act, until the carrier shall have complied with the provisions last referred to. (Sec. 6.)

So a common carrier subject to the provisions of the act is forbidden to enter into any combination, contract, or agreement, expressed or implied, to prevent by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being, and being treated, as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of the act. (Sec. 7.)

By the eleventh section a commission is created and established, to be known as the Interstate Commerce Commission, and to be composed of five commissioners, appointed by the President, by and with the advice and consent of the Senate. (Sec. 11.)

Other sections give a right of action to the persons injured by the acts of carriers done in violation of the statute; prescribe penalties against carriers for illegal exactions and discriminations; and indicate how the provisions of the statute may be enforced against carriers by the Commission.

The twelfth section (26 Stat. at L., 743, chap. 128) the validity of certain parts of which is involved in this proceeding, provides as follows:

That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other persons, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause of proceeding is at issue on petition and answer. The Commission

may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney for either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as herein before provided.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth; and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees, as are paid for like services in the courts of the United States. (Sec. 12.)

The nature of the present proceeding, instituted pursuant to the authority conferred by that section, will appear from the following summary of the pleadings and orders in the cause:

Prior to the 14th of June, 1892, informal complaint was made to the Interstate Commerce Commission, under the provisions of the interstate-commerce act, that the Illinois Steel Company, a corporation of Illinois, had caused to be incorporated under the laws of that State the Calumet and Blue Island Railroad Company, the Chicago and Southeastern Railway Company of Illinois, the Joliet and Blue Island Railway Company, and the Chicago and Kenosha Railway Company, for the purpose of operating its switches and side tracks at South Chicago, Chicago, and Joliet, respectively, and engaging in traffic by a continuous shipment from cities and places without to cities and places within Illinois, in connection, respectively, with the Baltimore and Ohio Railroad Company, the Baltimore and Ohio Southwestern Railroad Company, the Illinois Central Railroad Company, the Lake Shore and Michigan Southern Railway Company, the Chicago, Rock Island and Pacific Railway Company, the Pittsburg, Fort Wayne and Chicago Railway Company, the Pennsylvania Company, the Pennsylvania Railroad Company, the Belt Railway Company, the Chicago and Alton Railroad Company, the Chicago Railway Transfer Company, the Atchison, Topeka and Santa Fe Railway Company, the Elgin, Joliet and Eastern Railway Company, the Chicago and Northwestern Railway Company, and the Chicago, Milwaukee and St. Paul Railway Company; that it had also caused to be incorporated, under the laws of Wisconsin, the Milwaukee, Bay View and Chicago Railway Company, for the purpose of operating its switches and side tracks at or near Milwaukee, in that State, and engaging in traffic or traffic by a continuous shipment from places and cities without to cities and places within Wisconsin, in connection with the Chicago, Milwaukee and St. Paul Railway Company and the Chicago and Northwestern Railway Company; and that said Illinois Steel Company owned and controlled the above-named companies, which it caused to be incorporated under the laws of Illinois, and operated them in connection with the other companies named, "as a device for

the purpose of evading the provisions of the act to regulate commerce, and obtaining specil, illegal, unjust, and unreasonable rates for the transportation of interstate traffic," and, by the connivance and consent of said other connecting railroad companies, in such a manner as to give the Illinois Steel Company an illegal, undue, and unreasonable preference and advantage, subjecting other persons, firms, and companies to undue and unreasonable prejudice and discrimination in the transportation of property from divers cities and places without the States of Illinois and Wisconsin to divers cities and towns within those States.

It was made to appear to the Commission that the companies so owned, controlled, and operated by the Illinois Steel Company for more than the six months then last past had been and were still engaged in the transportation of property by railroad in connection with the other companies named "under a common control, management, and arrangement for a continuous carriage or shipment" from divers cities and towns without to divers cities and towns within the States of Illinois and Wisconsin, and that none of the companies, so owned, controlled, and operated, had filed with the Commission copies of their contracts, agreements, and common arrangements with the other companies, nor their tariffs nor schedules of rates, fares, and charges as required by the act of Congress.

The Commission, of its own motion, decided to investigate the matters set forth in said informal complaint by inquiring into the business of all of said railroad companies and the management thereof with reference as well to the alleged making of illegal, unjust, and unreasonable rates, as to the alleged unjust and illegal discrimination in favor of the Illinois Steel Company, and the failure, as above stated, to file with the Commission the above contracts, agreements, and tariffs.

An order was thereupon made by the Commission which recited the facts of the informal complaint made to it, and required each of the above-mentioned companies to make and file in its office in Washington, a full, complete, perfect, and specific verified answer, setting forth all the facts in regard to the matters complained of and responding to the following questions:

1. Does any contract, agreement, or arrangement, in writing or otherwise, exist between the companies above alleged to be under the control [of] and operated by the said Illinois Steel Company, and any of the other companies with reference to interstate traffic? If so, state the contract, agreement, or arrangement.

2. Or [are] any tariffs of rates and charges for the transportation of interstate property in effect between said companies above alleged to be under the control of and operated by the Illinois Steel Company and said other railroad companies? If so, what are they, and what are the divisions thereof between the several carriers?

3. Have the companies above alleged to be under the control of and operated by the Illinois Steel Company received interstate traffic from any of the other carriers above mentioned during the six months last past, or have they delivered any such traffic to such other carriers during that time, for any person, firm, or company other than the Illinois Steel Company; and, if so, to what amount?

The order further required all of the companies named to appear before the Commission at a named time and place in Chicago, when that body would proceed to make inquiry into and investigate the management of the said business by the carriers so ordered to appear.

Each of the companies which, according to the allegations of the petition, the Illinois Steel Company had caused to be incorporated, filed its answer with the Commission, and averred that it had in all respects complied with the obligations imposed upon it by the laws of the State and of the United States; that it was not engaged in interstate commerce within six months preceding the filing of the complaint against them; and it answered "No" to each of the above specific questions. The Calumet and Blue Island Railway Company also denied that the operation of its railways was a device to evade the provision of the interstate-commerce act, or had resulted in obtaining for the Illinois Steel Company special, illegal, unjust, or unreasonable rates in interstate traffic or in securing to that company illegal, undue, or unreasonable preferences.

The Commission, notwithstanding these denials, conceived it to be their duty to proceed with the investigation by the examination of witnesses and the books and papers of the corporations involved, and especially to ascertain whether the Illinois Steel Company was the owner in fact of the railroads which it was alleged to have caused to be incorporated, and whether such incorporations were for the purpose of giving to that company an undue and illegal preference in the transportation of its property and freight.

Among the witnesses subpoenaed to testify before the Commission was William G. Brimson, the president and manager of the five roads so incorporated in Illinois. Being asked what constituted the principal traffic of the roads, he said:

The business of these roads, except as indicated in the answers, is that of switching—switching business. We do a switching and terminal business, in that we are open to any business, for anybody's property, or persons who may locate at such place where we can go to them; mainly our business is with the Illinois Steel Company. This is the great proportion of our business.

In reply to the question whether his company engaged in transportation business other than as stated by him, he said that they did not, "except the Calumet and Blue Island, as stated in our reply. On that we do engage in other business to a certain extent." Having stated that his companies did not engage in the transportation business for everybody and anybody having occasion to employ them, and that their business was limited to the above companies with which they had traffic arrangements, he was asked whether the companies of which he was president and manager were owned by the Illinois Steel Company. The witness, under the advice of counsel, refused to answer this question.

J. S. Keefe, secretary and auditor of the five roads mentioned, was examined by the Commission as a witness. He admitted that he had in his possession a book showing the names of the stockholders of the Calumet and Blue Island Railway Company, but refused, upon the demand of the Commission, to produce it. He also refused to answer the question, "Do you know, as a matter of fact, whether the Illinois Steel Company owns the greater part of the stock of these several railroads?"

William R. Stirling, the first vice-president of the Illinois Steel Company, was also examined as a witness, and after stating that that company had a contract with the five railroads in question to handle the railroad business at the five "plants" of the Steel Company, refused to answer the question, "Is that the only relation which your company sustains to these railroad companies?"

On the succeeding day the Commission issued a subpoena *duces tecum*, directed to J. S. Keefe, secretary and auditor of the five railroads in

question, commanding him to appear before that body, and bring with him the stock books of those companies. A like subpoena was issued to William R. Stirling, as first vice-president of the Steel Company, commanding him to appear before the Commission and produce the stock books of that company. Keefe and Stirling appeared in answer to the subpoenas, but refused to produce the books, or either of them, so ordered to be produced.

The Commission thereupon, on the 15th day of July, 1892, presented to and filed in the court below its petition embodying the above facts and prayed that an order be made requiring and commanding Brimson, Keefe, and Stirling to appear before that body and answer the several questions propounded by them and which they had respectively refused to answer, and requiring Keefe and Stirling to appear and produce before the Commission the stock books above referred to as in their possession.

The answers of Brimson, Keefe, and Stirling in the present proceeding, besides insisting that the questions propounded to them, respectively, were immaterial and irrelevant, were based mainly upon the ground that so much of the interstate-commerce act as empowered the Commission to require the attendance and testimony of witnesses and the production of books, papers, and documents, and authorizes the circuit court of the United States to order common carriers or persons to appear before the Commission and produce books and papers and give evidence, and to punish by process for contempt any failure to obey such order of the court, was repugnant to the Constitution of the United States.

Is the twelfth section of the act unconstitutional and void, so far as it authorizes or requires the circuit court of the United States to use their process in aid of inquiries before the Commission? The court recognizes the importance of this question, and has bestowed upon it the most careful consideration.

As the Constitution extends the judicial power of the United States to all cases in law and equity arising under that instrument or under the laws of the United States, as well as to all controversies to which the United States shall be a party (Art. III, sec. 2), and as the circuit courts of the United States are capable, under the statutes defining and regulating their jurisdiction, of exerting such power in cases or controversies of that character, within the limits prescribed by Congress (25 Stat. at L., 434, chap. 866), the fundamental inquiry on this appeal is whether the present proceeding is a "case" or "controversy" within the meaning of the Constitution. The circuit court, as we have seen, regarded the petition of the Interstate Commerce Commission as nothing more than an application by an administrative body to a judicial tribunal for the exercise of its functions in aid of the execution of duties not of a judicial nature, and accordingly adjudged that this proceeding did not constitute a case or controversy to which the judicial power of the United States could be extended.

At the same time the learned court said:

Undoubtedly, Congress may confer upon a nonjudicial body authority to obtain information necessary for legitimate governmental purposes, and make refusal to appear and testify before it touching matters pertinent to any authorized inquiry an offense punishable by the courts, subject, however, to the privilege of witnesses to make no disclosures which might tend to criminate them or subject them to penalties or forfeitures. A prosecution or an action for violation of such a statute would clearly be an original suit or controversy between parties within the meaning of the Constitution, and not a mere application, like the present one, for the exercise of the judicial power in aid of a nonjudicial body. *Re Interstate Commerce Commission*, 4 Inters. Com. Rep., 315, 53 Fed. Rep. 476, 480.)

In other words, if the interstate-commerce act made the refusal of a witness duly summoned to appear and testify before the Commission in respect to a matter rightfully committed by Congress to that body for examination an offense against the United States, punishable by fine or imprisonment, or both, a criminal prosecution or an information for the violation of such a statute would be a case or controversy to which the judicial power of the United States extended; while a direct civil proceeding, expressly authorized by an act of Congress, in the name of the Commission, and under the direction of the Attorney-General of the United States, against the witness so refusing to testify, to compel him to give evidence before the Commission touching the same matter, would not be a case or controversy of which cognizance could be taken by any court established by Congress to receive the judicial power of the United States.

This interpretation of the Constitution would restrict the employment of means to carry into effect powers granted to Congress within much narrower limits than, in our judgment, is warranted by that instrument.

The Constitution expressly confers upon Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and to make all laws necessary and proper for carrying that power into execution. (Art. I, sec. 8.) While the completely internal commerce of a State is reserved to the State itself, because never surrendered to the General Government, commerce, the regulation of which it committed by the Constitution to Congress, comprehends traffic, navigation, and every species of commercial intercourse or trade between the United States, among the several States, and with the Indian tribes. (*Gibbons v. Ogden*, 22 U. S. (9 Wheat.), 1, 193, 194; 6: 23, 69.)

It may be doubted [this court has said] whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce, and all commerce among the States. To construe the power so as to impair its efficiency would tend to defeat an object in the attainment of which the American public took, and justly took, that strong interest which arose from a full convention of its necessity. (*Brown v. Maryland*, 25 U. S. (12 Wheat.), 419, 446; 6: 678, 688; *Philadelphia S. M. SS. Co. v. Pennsylvania*, 122 U. S., 326, 346; 30: 1200, 1205, 1 Inters. Com. Rep., 308.) In the matter of interstate commerce [this court, speaking by Mr. Justice Bradley, has declared], the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. (*Robbins v. Shelby County Taxing Dist.*, 120 U. S., 489, 494; 30: 694, 696, 1 Inters. Com. Rep., 45.) The same principle was announced by the present Chief Justice in *Stoutenburgh v. Hennick*, 129 U. S., 141, 148; 32: 637, 639.)

What is the nature of the power thus expressly given to Congress, and to what extent, and under what restrictions, may it be constitutionally exerted?

This question was answered when Chief Justice Marshall said that it was the power "to prescribe the rule by which commerce is to be governed."

This power [the Chief Justice continued], like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution

the same restrictions on the exercise of the power as are found in the Constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments. (*Gibbons v. Ogden*, 22 U. S. (9 Wheat.), 1, 189, 196, 197; 6: 23, 68, 70.)

Congress thus having plenary power subject to the limitations imposed by the Constitution to prescribe the rule by which commerce among the several States is to be governed, the question necessarily arises, what are the principles that should control the judiciary when determining whether a particular act of Congress, avowedly adopted in execution of that power, is consistent with the fundamental limitations of the Constitution?

The general principle applicable to this subject was long ago announced by this court, and has been so often affirmed and applied that argument in support of it is unnecessary, even if it were possible to suggest any thought not heretofore expressed in the adjudged cases. In the great case of *McCulloch v. Maryland*, 17 U. S. (4 Wheat.), 316, 421, 423 (4: 579, 605), it was said:

The sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

Again:

Where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power.

Guided by these principles, we proceed to inquire whether the twelfth section of the interstate commerce act, so far as it authorizes the present proceeding, assumes to invest the circuit courts of the United States with functions that are not judicial.

It was not disputed at the bar, nor indeed can it be successfully denied, that the prohibition of unjust charges, discriminations, or preferences, by carriers engaged in interstate-commerce, in respect to property or persons transported from one State to another, is a proper regulation of interstate commerce, or that the object Congress has in view by the act in question may be legitimately accomplished by it under the power to regulate commerce among the several States. In every substantial sense such prohibition is a rule by which interstate commerce must be governed, and is plainly adapted to the object intended to be accomplished. The same observation may be made in respect to those provisions empowering the Commission to inquire into the management of the business of carriers subject to the provisions of the act, and to investigate the whole subject of interstate commerce as conducted by such carriers, and, in that way, to obtain full and accurate information of all matters involved in the enforcement of the act of Congress. It was clearly competent for Congress, to that end, to invest the Commission with authority to require the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements, and documents relating to any matter legally committed to that body for investigation. We do not understand that any of these propositions are disputed in this case.

Interpreting the interstate-commerce act as applicable, and as intended to apply only to matters involved in the regulation of commerce, and which Congress may rightfully subject to investigation by a Commission established for the purpose of enforcing that act, we are unable to say that its provisions are not appropriate and plainly adapted to the protection of interstate commerce from burdens that are or may be, directly and indirectly, imposed upon it by means of unjust and unreasonable discriminations, charges, and preferences. Congress is not limited in its employment of means to those that are absolutely essential to the accomplishment of objects within the scope of the powers granted to it. It is a settled principle of constitutional law that—

The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception. (17 U. S. (4 Wheat.), 316, 409; 4:579, 602.)

The test of the power of Congress is not the judgment of the courts that particular means are not the best that could have been employed to effect the end contemplated by the legislative department. The judiciary can only inquire whether the means devised in the execution of a power granted are forbidden by the Constitution. It can not go beyond that inquiry without intrenching upon the domain of another department of the government. That it may not do with safety to our institutions. (*Union Pac. R. Co. v. United States "Sinking Fund Cases,"* 99 U. S., 700, 718; 25:496, 501.)

An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce and with power to call witnesses before it, and to require the production of books, documents, and papers relating to that subject, would go far toward defeating the object for which the people of the United States placed commerce among the States under national control. All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce can not be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced, otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules.

It is to be observed that independently of any question concerning the nature of the matter under investigation by the Commission—however legitimate or however vital to the public interests the inquiry being conducted by that body—the judgment below rests upon the broad ground that no direct proceeding to compel the attendance of a witness before the Commission, or to require him to answer questions put to him, or to compel the production of books, documents, or papers in his possession relating to the subject under examination, can be deemed a case or controversy of which, under the Constitution, a court of the United States may take cognizance, even if such proceeding be in form judicial. And the theory upon which the judgment proceeded is applicable alike to corporations and individuals, although by the established doctrine of the courts a railroad corporation may, under legislative sanction and upon making compensation, appropriate private property for the purposes of its right of way, because and only because its road is a public highway established primarily for the convenience of the

people and to subserve public objects, and, therefore, subject to governmental control. (*Cherokee Nation v. Southern Kansas R. R. Co.*, 135 U. S., 641, 657; 34: 295, 302.)

What is a case or controversy to which, under the Constitution, the judicial power of the United States extends? Referring to the clause of that instrument which extends the judicial power of the United States to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or that shall be made under their authority, this court, speaking by Chief Justice Marshall, has said:

This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States. (*Osborn v Bank of United States*, 22 U. S. (9 Wheat.), 738, 819; 6: 204, 223.)

And in *Den v. Hoboken Land and Imp. Co.*, 59 U. S. (18 How.), 272, 284; 15: 372, 377, Mr. Justice Curtis, after observing that Congress cannot withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty, nor on the other hand, bring under judicial power a matter which, from its nature, is not a subject for judicial determination, said:

At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States as it may deem proper.

So, in *Smith v. Adams*, 130 U. S., 173; 32: 897, Mr. Justice Field, speaking for the court, said that the terms "cases" and "controversies" in the Constitution embraced "the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs."

Testing the present proceeding by these principles, we are of opinion that it is one that can properly be brought under judicial cognizance.

We have before us an act of Congress authorizing the Interstate Commerce Commission to summon witnesses and to require the production of books, papers, tariffs, contracts, agreements, and documents relating to the matter under investigation. The constitutionality of this provision, assuming it to be applicable to a matter that may be legally intrusted to an administrative body for investigation, is, we repeat, not disputed, and is beyond dispute. Upon everyone, therefore, who owes allegiance to the United States, or who is within its jurisdiction, enjoying the protection that its Government affords, rests an obligation to respect the national will as thus expressed in conformity with the Constitution. As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon anyone summoned by that body to appear and to testify the duty of appearing and testifying, and upon anyone required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused on some personal ground from doing what the Commission requires at his hands. These propositions seem to be so

clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion. Whether the Commission is entitled to the evidence it seeks, and whether the refusal of the witness to testify or to produce books, papers, etc., in his possession, is or is not in violation of his duty or in derogation of the rights of the United States, seeking to execute a power expressly granted to Congress, are the distinct issues between that body and the witness. They are issues between the United States and those who dispute the validity of an act of Congress and seek to obstruct its enforcement. And those issues, made in the form prescribed by the act of Congress, are so presented that the judicial power is capable of acting on them.

The question so presented is substantially, if not precisely, that which would arise if the witness was preceeded against by indictment under an act of Congress declaring it to be an offense against the United States for anyone to refuse to testify before the Commission after being duly summoned, or to produce books, papers, etc., in his possession upon notice to do so, or imposing penalties for such refusals to testify or to produce the required books, papers, and documents. A prosecution for such offense or a proceeding by information to recover such penalties would have as its real and ultimate object to compel obedience to the rightful orders of the Commission while it was exerting the powers given to it by Congress. And such is the sole object of the present direct proceeding. The United States asserts its right, under the Constitution and laws, to have these appellees answer the questions propounded to them by the Commission, and to produce specified books, papers, etc., in their possession or under their control. It insists that the evidence called for is material in the matter under investigation, that the subject of investigation is within legislative cognizance, and may be inquired of by any tribunal constituted by Congress for that purpose. The appellees deny that any such rights exist in the General Government, or that they are under a legal duty, even if such evidence be important or vital in the enforcement of the interstate-commerce act, to do what is required of them by the Commission. Thus has arisen a dispute involving rights or claims asserted by the respective parties to it. And the power to determine it directly, and as between the parties, finally, must reside somewhere. It can not be that the General Government, with all the power conferred upon it by the people of the United States, is helpless in such an emergency, and is unable to provide some method, judicial in form, and direct in its operation, for the prompt and conclusive determination of this dispute.

As the circuit court is competent under the law by which it was ordained and established to take jurisdiction of the parties, and as a case arises under the Constitution or laws of the United States when its decision depends upon either, why is not this proceeding judicial in form and instituted for the determination of distinct issues between the parties, as defined by formal pleadings, a case or controversy for judicial cognizance, within the meaning of the Constitution? It must be so regarded unless, as is contended, Congress is without power to provide any method for enforcing the statute or compelling obedience to the lawful orders of the Commission, except through criminal prosecutions or by civil actions to recover penalties imposed for noncompliance with such orders. But no limitation of that kind upon the power of Congress to regulate commerce among the States is justified either by the letter or the spirit of the Constitution. Any such rule of constitutional interpretation, if applied to all the grants of power made to Congress, would defeat the principal objects for which the Constitution was ordained. As the issues are so presented that the judicial power is

capable of acting on them finally as between the parties before the court, we can not adjudge that the mode prescribed for enforcing the lawful orders of the Interstate Commission is not calculated to attain the object for which Congress was given power to regulate interstate commerce. It can not be so declared unless the incompatibility between the Constitution and the act of Congress is clear and strong. (*Fletcher v. Peck*, 10 U. S., 6 Cranch, 87, 128, 3: 162, 175.) In accomplishing the objects of a power granted to it, Congress may employ any one or all the modes that are appropriate to the end in view, taking care only that no mode employed is inconsistent with the limitations of the Constitution.

We do not overlook those constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. (*Kilbourn v. Thompson*, 103 U. S., 168, 190, 26: 377, 386.) We said in *Boyd v. United States*, 116 U. S., 616, 630 (29: 746, 751), and it can not be too often repeated, that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the Government and its employes of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice Field in *Re Pacific Railroad Commission* (32 Fed. Rep., 241, 250):

Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.

It was said in argument that the twelfth section was in derogation of those fundamental guaranties of personal rights that are recognized by the Constitution as inhering in the freedom of the citizen. It is scarcely necessary to say that the power given to Congress to regulate interstate commerce does not carry with it any power to destroy or impair those guaranties. The court has already spoken fully upon that general subject in *Counselman v. Hitchcock*, 142 U. S., 547 (35:1110), 3 Inters. Com. Rep., 816. We need not add anything to what has been there said. Suffice it, in the present case, to say that as the Interstate Commerce Commission, by petition in a circuit court of the United States, seeks, upon grounds distinctly set forth, an order to compel appellees to answer particular questions and to produce certain books, papers, etc., in their possession, it was open to each of them to contend before that court that he was protected by the Constitution from making answer to the questions propounded to him; or that he was not legally bound to produce the books, papers, etc., ordered to be produced; or that neither the questions propounded nor the books, papers, etc., called for relate to the particular matter under investigation, nor to any matter which the Commission is entitled under the Constitution or laws to investigate. These issues being determined in their favor by the court below, the petition of the Commission could have been dismissed upon its merits.

It may be proper to state in this connection that after the decision in *Counselman v. Hitchcock*, the interstate-commerce act was amended by an act approved February 11, 1893, which provides—

That no person shall be excused from attending and testifying, or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether

such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense, and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. (27 Stat. at L., 443, chap. 83.)

But that act was not in force when this case was determined below. Nor does it reach the question whether a proceeding like the present one can be maintained in a circuit court of the United States.

In the course of the argument at the bar our attention was called to Hayburn's Case, 2 U. S., 2; Dall., 409 (1: 436), and *United States v. Ferreira*, 54 U. S., 13; How., 40, 46 (14: 42, 44), as announcing principles not in harmony with the views we have expressed in this opinion.

Hayburn's case was an application for a mandamus to be directed to the circuit court of the United States for the district of Pennsylvania, commanding that court to proceed in a petition by Hayburn to be put on the pension list of the United States in conformity with an act of Congress approved March 23, 1792, chap. 11, which provided for the settlement of the claims of widows and orphans barred by limitations previously established, and to regulate claims to invalid pensions. This court took the case under advisement, but as Congress provided in another way for the relief of invalid pensioners, no decision was made. Nevertheless, by a note to Hayburn's case, we are informed of the views expressed at the circuit by different members of this court in relation to the act of 1792. They concurred in holding that it was not in the power of Congress to assign to the courts of the United States any duties except such as were properly judicial, and to be performed in a judicial manner; and that the duties assigned to the circuit courts were not of that description, and were not contemplated by the act of Congress as of that character, and, consequently, that the act could be considered as only appointing commissioners for the purposes mentioned in it by official instead of personal descriptions, which positions the judges of the court were at liberty to accept or decline.

In a note prepared by Chief Justice Taney, under the direction of this court, and found in 54 U. S., 13; How., 52 (14:47), an account is given of *United States v. Todd*, which also involves the validity of the act of 1792, so far as it imposed upon the circuit courts duties relating to pensions. And it is there stated that Chief Justice Jay and Justice Cushing, upon further reflection, became satisfied that the power conferred by the act of 1792 on the circuit court as a court could not be construed as giving such power to the judges of the court as commissioners.

The same general principles were announced in *Ferreira's* case, which arose under the treaty of 1819 between Spain and the United States, and under certain acts of Congress passed to carry a particular article

of that treaty into execution. The case came before this court upon appeal from a decision or award made by the district judge, acting upon a special statute authorizing him to receive and adjudicate certain claims. A motion to dismiss the appeal for want of jurisdiction in this court raised the question whether the district judge exercised judicial power, strictly speaking, under the Constitution. The motion to dismiss was sustained. Chief Justice Taney, referring to the statutes under which the district judge proceeded, said:

It is manifest that this power to decide upon the validity of these claims is not conferred on them as a judicial function to be exercised in the ordinary forms of a court of justice. For there is to be no suit; no parties, in the legal acceptance of the term, are to be made; no process to issue; and no one is authorized to appear in behalf of the United States, or to summon witnesses in the case. The proceeding is altogether *ex parte*, and all that the judge is required to do is to receive the claim when the party presents it, and to adjust it upon such evidence as he may have before him, or be able himself to obtain. But neither the evidence nor his award are to be filed in the court in which he presides, nor recorded there; but he is required to transmit both the decision and the evidence upon which he decided to the Secretary of the Treasury; and the claim is to be paid if the Secretary thinks it just and equitable, but not otherwise. It is to be a debt from the United States upon the decision of the Secretary, but not upon that of the judge. It is too evident for argument on the subject that such a tribunal is not a judicial one, and that the act of Congress did not intend to make it one. The authority conferred on the respective judges was nothing more than that of a commissioner to adjust certain claims against the United States; and the office of judges and their respective jurisdictions are referred to in the law merely as a designation of the persons to whom the authority is confided, and the territorial limits to which it extends. The decision is not the judgment of a court of justice. It is the award of a commission. (54 U. S., 13 How., 40, 46, 47, 14: 42, 44.)

It thus appears that the act of 1792, above referred to, attempted to impose upon the courts of the United States duties purely administrative in their character. So, also, the acts of Congress involved in Ferreira's case conferred no authority upon the district judge to determine finally any questions of a judicial nature, and, without requiring any petition to be filed, and without empowering the district attorney to enter an appearance for the United States, so as to make it a party to the proceeding, or to authorize a judgment against it, gave that officer the power only of adjusting, without the presence of parties, certain claims, the allowance and payment of which, after being so adjusted, were made to depend wholly upon the discretion of the Secretary of the Treasury.

Some allusion should be made in this connection to *Gordon v. United States*, 117 U. S. appx., p. 697 and *Re Sanborn*, 148 U. S., 222 (37: 429).

In *Gordon's* case, the question was whether this court had jurisdiction to review the action of the Court of Claims in respect to a claim examined and allowed in the latter court under an act of Congress (12 Stat. at L., 65, chap. 92, secs. 5, 7, 14) which, among other things, provided that no money should be paid out of the Treasury for any claim passed upon by the Court of Claims, until after an appropriation therefor should be estimated by the Secretary of the Treasury, and an appropriation to pay it be made by Congress. Under that act neither the Court of Claims nor this court could do anything more than certify their opinion to the Secretary of the Treasury, and it depended upon that officer, in the first place, to decide whether he would include it in his estimates of private claims, and if he decided in favor of the claimant, it rested with Congress to determine whether it would or would not make an appropriation for its payment. Neither the Court of Claims nor this court could, by any process, enforce its judgment; and whether the claim was paid or not did not depend on the decision of either court,

but upon the future action of the Secretary of the Treasury and of Congress.

The appeal of Gordon was dismissed upon the ground that Congress could not "authorize or require this court to express an opinion on a case where its judicial power could not be exercised, and where its judgment would not be final and conclusive upon the rights of the parties, and process of execution awarded to carry it into effect."

The award of execution [said Chief Justice Taney] is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion which would remain a dead letter, and without any operation upon the rights of the parties, unless Congress should at some future time sanction it, and pass a law authorizing the court to carry its opinion into effect. Such is not the judicial power confided to this court in the exercise of its appellate jurisdiction; yet it is the whole power that the court is allowed to exercise under this act of Congress, p. 702. (See *De Groot v. United States*, 72 U. S., 5 Wall., 419, 18:700.)

In Sanborn's case, above cited, the same principles were announced. That case arose under an act of Congress of March 3, 1887 (24 Stat. at L., 505., chap., 105), one section of which provided that "when any claim or matter may be pending in any of the Executive Departments which involves controverted questions of fact or law, the head of such Department, with the consent of the claimant, may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said Court of Claims, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the Department by which it was transmitted. (Sec. 12.) This court dismissed an appeal from a finding of the Court of Claims, under this act. Referring to the cases of Hayburn, Todd, Ferreira, and Gordon, above cited, it observed: "Such a finding is not made obligatory on the Department to which it is reported—certainly not so in terms—and not so, as we think, by any necessary implication. We regard the function of the Court of Claims, in such a case, as ancillary and advisory only. The finding or conclusion reached by that court is not enforceable by any process of execution issuing from the court, nor is it made by the statute the final and indisputable basis of action either by the Department or by Congress," p. 226. (431.)

The views we have expressed in the present case are not inconsistent with anything said or decided in those cases. They do not, in any manner, infringe upon the salutary doctrine that Congress (excluding the special cases provided for in the Constitution, as, for instance, in section 2 of Article II, of that instrument) may not impose upon the courts of the United States any duties not strictly judicial. The duties assigned to the circuit courts of the United States by the twelfth section of the interstate-commerce act are judicial in their nature. The inquiry, whether a witness before the Commission is bound to answer a particular question propounded to him, or to produce books, papers, etc., in his possession and called for by that body, is one that can not be committed to a subordinate administrative or executive tribunal for final determination. Such a body could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment. Except in the particular instances enumerated in the Constitution, and considered in *Anderson v. Dunn*, 19 U. S., 6 Wheat. 204 (5:242), and in *Kilbourn v. Thompson*, 103 U. S., 168, 190 (26:377,

386), of the exercise by either House of Congress of its right to punish disorderly behavior upon the part of its members, and to compel the attendance of witnesses, and the production of papers in election and impeachment cases, and in cases that may involve the existence of those bodies, the power to impose fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted, under the law of the land, by a competent judicial tribunal having jurisdiction in the premises. (See *Whitcomb's Case*, 120 Mass., 118, 21 Am. Rep., 502, and authorities there cited.)

Without the aid of judicial process of some kind the regulations that Congress may establish in respect to interstate commerce can not be adequately or efficiently enforced. One mode, as already suggested—the validity of which is not questioned—of compelling a witness to testify before the Interstate Commerce Commission, to answer questions propounded to him relating to the matter under investigation and which the law makes it his duty to answer, and to produce books, papers, etc., is to make his refusal to appear and answer, or to produce the documentary evidence called for, an offense against the United States punishable by fine or imprisonment. A criminal prosecution of the witness under such a statute, it is conceded, would be a case or controversy within the meaning of the Constitution, of which a court of the United States could take jurisdiction. Another mode would be to proceed by information to recover any penalty imposed by the statute. A proceeding of that character, it is also conceded, would be a case or controversy of which a court of the United States could take cognizance. If, however, Congress in its wisdom authorizes the Commission to bring before a court of the United States for determination the issues between it and a witness, that mode of enforcing the act of Congress and of compelling the witness to perform his duty, is said not to be judicial, and is beyond the power of Congress to prescribe.

We can not assent to any view of the Constitution that concedes the power of Congress to accomplish a named result indirectly, by particular forms of judicial procedure, but denies its power to accomplish the same result directly, and by a different proceeding judicial in form. We could not do so without denying to Congress the broad discretion with which it is invested by the Constitution of employing all or any of the means that are appropriate or plainly adapted to an end which it has unquestioned power to accomplish, namely, the protection of interstate commerce against improper burdens and discriminations. Indeed, of all the modes that could be constitutionally prescribed for the enforcement of the regulations embodied in the interstate-commerce act, that provided by the twelfth section is the one which more than any other will protect the public against the devices of those who, taking advantage of special circumstances, or by means of combinations too powerful to be resisted and overcome by individual effort, would subject commerce among the States to unjust and unreasonable burdens.

The present proceeding is not merely ancillary and advisory. It is not, as in *Gordon's case*, one in which the United States seeks from the circuit court of the United States an opinion that “would remain a dead letter, and without any operation upon the rights of the parties.” The proceeding is one for determining rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court. And that judgment may be enforced by the process of the circuit court.

Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the Government, rests upon the defendants, can not be directly enforced except by judicial process.

One of the functions of a court is to compel a party to perform a duty which the law requires at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but, in the words of *Sanborn's case*, will be a "final and indisputable basis of action," as between the Commission and the defendants, and will furnish a precedent in all similar cases. It will be as much a judgment that may be carried into effect by judicial process as one for money, or for the recovery of property, or a judgment in *mandamus* commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is none the less the judgment of a judicial tribunal dealing with questions judicial in their nature, and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution.

This view is illustrated by the case of *Fong Yue Ting v. United States*, 149 U. S. 698, 728 (37: 905, 918), which arose under the act of May 5, 1892, chap. 60, prohibiting the coming of Chinese persons into the United States. That act provided for the arrest and removal from the United States of any person of Chinese descent unlawfully within this country, unless such persons shall establish by affirmative proof, to the satisfaction of a justice, judge, or commissioner of the United States before whom he might be brought and tried, his lawful right to remain in the United States. It also authorized the arrest of such person by any customs official, collector of internal revenue, or U. S. marshal, and taken before a U. S. judge. This court said:

When, in the form prescribed by law, the executive officer, acting in behalf of the United States, brings the Chinese laborer before the judge in order that he may be heard, and the facts upon which depends his right to remain in the country be decided, a case is duly submitted to the judicial power; for here are all the elements of a civil case—a complainant, defendant, and a judge—*actor, reus et judex*. (3 Bl. Com. 25; *Osborn v. Bank of United States*, 22 U. S., 9 Wheat., 738, 819; 6: 204, 223.) No formal complaint or pleadings are required, and the want of them does not affect the authority of the judge or the validity of the statute.

Another suggestion thrown out in argument against the validity of the twelfth section of the interstate-commerce act, in the particular adverted to, is that the defendants are not accorded a right of trial by jury. If, as we have endeavored to show, this proceeding make a case or controversy within the judicial power of the United States, the issue whether the defendants are under a duty to answer the questions propounded to them, and to produce the books, papers, documents, etc., called for, is manifestly not one for the determination of a jury. The issue presented is not one of fact, but of law exclusively. In such a case, the defendant is no more entitled to a jury than is a defendant in a proceeding by *mandamus* to compel him, as an officer, to perform a ministerial duty. Of course the question of punishing the defendants for contempt could not arise before the Commission; for, in a judicial sense, there is no such thing as contempt of a subordinate administrative body. No question of contempt could arise until the issue of law,

in the circuit court, is determined adversely to the defendants and they refuse to obey, not the order of the Commission, but the final order of the court. And, in matters of contempt, a jury is not required by "due process of law." From the very nature of their institution, and that their lawful judgments may be respected and enforced, the courts of the United States possess the power to punish for contempt. And this inherent power is recognized and enforced by a statute expressly authorizing such courts to punish contempts of their authority when manifested by disobedience of their lawful writs, process, orders, rules, decrees, or commands. (Rev. Stat., sec. 725; 1 Stat. at L., 83; 4 Stat. at L., 487; *United States v. Hudson*, 11 U. S. (7 Cranch), 32; 3:259; *Anderson v. Dunn*, 19 U. S. (6 Wheat.), 204, 227; 5: 242, 247; *Ex parte Robinson*, 86 U. S. (19 Wall.), 505, 510; 22: 205, 207; *Ex parte Terry*, 128 U. S., 289, 302, 303; 32: 405, 408; *Cartwright's Case*, 114 Mass., 230, 238.) Surely it can not be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable, of right, by a jury.

We are of opinion that a judgment of the circuit court of the United States, determining the issues presented by the petition of the Interstate Commerce Commission and by the answers of appellees, will be a legitimate exertion of judicial authority in a case or controversy to which, by the Constitution, the judicial power of the United States extends. And a final order by that court dismissing the petition of the Commission, or requiring the appellees to answer the questions propounded to them, and to procure the books, papers, etc., called for, will be a determination of questions upon which a court of the United States is capable of acting and which may be enforced by judicial process. If there is any legal reason why appellees should not be required to answer the questions put to them, or to produce the books, papers, etc., demanded of them, their rights can be recognized and enforced by the court below when it enters upon the consideration of the merits of the questions presented by the petition.

In view of the conclusion reached upon the only question determined by the circuit court, what judgment shall be here entered? The case was heard below upon the petition of the Commission and the answers of the defendants. But no ruling was made in respect to the materiality of the evidence sought to be obtained from the defendants. Passing by every other question in the case, the circuit court, by its judgment, struck down so much of the twelfth section as authorized or required the courts to use their process in aid of inquiries before the Commission. Under the circumstances, we do not feel obliged to go further at this time than to adjudge, as we now do, that that section in the particular named is constitutional, and to remand the cause that the court below may proceed with it upon the merits of the questions presented by the petition and the answers of the defendants and make such determination thereof as may be consistent with law. Any other course would, it might be apprehended, involve the exercise of original jurisdiction, and might possibly work injustice to one or the other of the parties.

For the reasons stated the judgment is reversed, and the cause is remanded for further proceedings in conformity with this opinion. Reversed.

Dissenting: Mr. Justice Brewer, the Chief Justice, Mr. Justice Jackson. Mr. Justice Field was not present at the argument of this case and took no part in the consideration or decision of it.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS—
FEBRUARY TERM, 1894.

DECISION BY JUDGE GROSSCUP.

UNITED STATES v. JAMES et al.

[District Court, northern district of Illinois. February 26, 1894.]

Constitutional law—Interstate-commerce act—Compelling self-incrimination.

Act February 11, 1893, which declares that no person shall be excused from testifying or producing documents in proceedings based upon the interstate-commerce act on the ground that it may tend to criminate him, but that he shall not be prosecuted or punished on account of any matter concerning which he may testify, violates the fourth and fifth amendments to the United States Constitution, which declare that the right of the people to be secure against unreasonable searches and seizures shall not be violated, and that no person shall be compelled in any criminal case to be a witness against himself.

Rule to punish James G. James and Gordon McLeod for contempt of court in refusing to answer questions asked by the grand jury. Rule discharged.

T. E. Milchrist, U. S. district attorney. J. N. Jewett and Aldace F. Walker, for defendants.

GROSSCUP, district judge. The grand jurors report to the court that on the 16th day of February instant they were duly engaged in inquiring into certain alleged violations, in this district and division, of the interstate-commerce act by the Lake Shore and Michigan Southern Railway Company and other railroads and common carriers, and that James G. James, being before them in response to a subpoena as a witness and being inquired of respecting his knowledge of the shipment of certain products from Chicago east at a less freight rate than was named in the open tariffs then in force, declined to answer the question, for the reason that an answer thereto would tend to criminate himself personally, or would disclose a source of evidence which would tend to criminate him personally, under the provisions of the interstate-commerce act. Certain other questions of alike tenor were propounded, and the answers refused by the witness substantially for the same reasons. On the same day Gordon McLeod appeared before the grand jurors as a witness, and, after answering that he was the general manager of the Merchants' Dispatch Transportation Company at Chicago, was asked if, in response to a subpoena to that end, he was ready to produce certain reports, or copies thereof, made to the Central Traffic Association, the Trunk Lines Association, or any person connected therewith, by the Lake Shore and Michigan Southern Railway Company, the Merchants' Dispatch Transportation Company, or any person connected therewith, relating to the shipments of property from Chicago to points outside of the State of Illinois in September, 1892, and certain other documents of the same character, to which he responded that he was not, and, upon being inquired of why not, he refused to answer the question, for the reason that the answer might tend to criminate him, or lead to disclosures that would criminate him.

This report brings to the court the question whether the act of February 11, 1893, is violative of the letter or spirit of the fourth and fifth amendments to the Constitution of the United States. The fourth amendment provides "that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated," and the fifth amendment declares "that no person shall be compelled in any criminal case to be a witness against himself." The act of February 11, 1893, in effect provides that no person shall be excused from testifying or producing books, papers, tariffs, contracts, agreements, and documents in any case or proceeding, criminal or otherwise, based upon the interstate-commerce act on the ground that the same may tend to criminate him, or subject him to a penalty or forfeiture, but that any person so testifying shall not be prosecuted or subjected to any penalty or forfeiture, on account of any transaction, matter, or thing concerning which he may testify, or produce the documentary or other evidence.

Every man's life is, so far as society is interested, a series of personal acts. Each act, not impinging unlawfully upon the rights of others, or falling within the definitions of the criminal statutes, is a personal right of the individual. The criminal code is a series of definitions which, for the purposes of public safety or welfare, designate certain of these personal acts, either isolated or in connection with other acts or intentions, as crimes against the commonwealth. The identification of the acts with the definitions of the criminal code is dependent upon such knowledge as can be obtained, either from the observation of others or the disclosures of the person himself. The methods of such identification have been formulated into what may be called the science of evidence. These personal acts, however, like the events of natural law, are interlinked with others, and are each a part only of a connected and cohering series of acts. The student of nature uncovers her unknown events by seizing upon a known event, and with the knowledge and suggestions thus acquired, proceeds according to the laws of known connection to others. Thus, an event remote from the one that is the ultimate object of the inquiry becomes the clue or break from which the process of unraveling begins. Judicial tribunals, in search of personal acts that fall within the criminal code, are served by a like law of connection and cohesiveness. A known act in a person's life is made the beginning of the tribunal's work of unraveling, and, though apparently remote from the actual criminal deed, is so linked therewith that the judicial following out of the intervening thread will eventually bring out the full disclosure of the criminal act. The disclosure of such a remote act is therefore indirectly, but effectually, a disclosure of the criminal act itself. Since the Counselman case (142 U. S. 547, 12 Sup. Ct., 195), it is admitted law that every person is protected by the fifth amendment against self-disclosure in any proceeding, civil or criminal, of such of his own acts as would subject either the act, or any connected act, to the dangers of incrimination. The theory of our criminal proceeding, like that of Great Britain, is accusatory and not inquisitorial. No person can be subjected to the penalties of the law unless every fact essential to the identification of the act charged with the crime is apparent from sources other than himself, or his own voluntary disclosures. The accused can stand, as against the menace of the law's penalties, upon the sanctity of his own personal knowledge, and the constitutional guaranty puts a seal upon knowledge that no legislative or judicial hand can break. Of course, this immunity or personal right can only protect against the danger that was in contem-

plation of the Constitution, and can not, therefore, be diverted, as mere pretexts, and uses beyond that point. To avoid its misuse upon such pretexts, and at the same time secure to the person's knowledge the sanctity that is intended, it devolves upon the court, in each instance to determine, from all the circumstances of the situation, when the question arises, whether the disclosure sought for carries any real menace of self-incrimination.

But, while the Counselman case establishes this guaranty to the extent thus pointed out, it leaves undecided the most interesting and important question connected with the subject. In the case under investigation now it is claimed that the act of February 11, 1893, affords all the immunity that the fifth amendment was intended to provide. If the guaranty of the fifth amendment be simply against a compulsory self-invoking of the penalties and forfeitures of the law, as distinguished from the other consequences of self-accusation, the claim is, in my opinion, well founded. The act of February 11, 1893, is a broad prohibition against the prosecution of a person for any act to which the disclosure relates. It unquestionably refers to a criminal procedure like this, and the immunity stated in the latter clause of the act relates, undoubtedly, not simply to the causes or proceedings before the Interstate Commerce Commission, but to any cause or proceeding, criminal or otherwise.

It is urged with much emphasis that Congress can not compel, even upon conditions of pardon, that which the Constitution forbids—that the Constitution can not be amended by a simple legislative act. The proposition in the abstract is true. If the fifth amendment is intended to grant to the person complete immunity against all the consequences of self-accusation of crime, irrespective of the nature of such consequences no legislative act can cut down or diminish such immunity. The prohibition against prosecution would, in that case, not be coextensive with the right or immunity accorded by the Constitution. But, if the fifth amendment be simply a guaranty against the law-inflicted pains and penalties that might follow compulsory self-accusation, it is clear that the abrogation of such pains or penalties, so far as they are applicable to the person interested, is a complete fulfillment of the constitutional guaranty. If the amendment were made for that purpose only it is only prohibitory of legislation that might interfere with that purpose. If that purpose be effectually recognized and protected in the legislative act it can not be said that such act either repeals or violates the Constitution. Every person is subject, in respect of his duty to give testimony, to the legislation of Congress, except as the power of Congress in that respect is curtailed by the Constitution. The act is operative upon the individual if it preserves inviolate his constitutional immunity; and, if that immunity is against the law-inflicted penalties and forfeitures of crime only, the abrogation of such penalties and forfeitures prevents the legislative act and the immunity from coming in conflict. The argument, in so far as it admits that the amendment grants an immunity against the law-inflicted pains and penalties of self-accusation only, and still insists that it is a repeal of the Constitution, is fallacious, because it assumes that the language of the amendment is broader than its admitted purpose. The argument introduces a confusion of terms, by giving to the language of the amendment one meaning, and to its real intention a narrower one. Harmonize the language of the amendment and its supposed real purpose in one term—as, for instance, “No person shall suffer the law-inflicted pains and penalties of conviction, to the bringing about of which his involuntary self-accusation has

contributed"—and the act of February 11, 1893, is at once seen to be no impingement upon the fifth amendment.

The question, then, comes back to this: What was the real purpose of the framers of the fifth amendment? Did they intend to guarantee immunity thereby against compulsory self-accusation of crime, so far as it might bring to the witness law-inflicted pains and penalties only? Or was it the purpose to make the secrets of memory, so far as they brought one's former acts within the *definitions of crime*, inviolate as against judicial probe or disclosure?

The Counselman case leaves this question undecided. Some of the dicta of opinion seem to show that the court purposely left it undecided. As, for instance, the opinion states: "It is quite clear that legislation can not abridge a constitutional privilege, and that it can not replace or supply one, at least unless it is so broad as to have the same extent in scope and effect." So far, therefore, as the Supreme Court of the United States is concerned, I regard the question as an open one.

There is a long line of decisions in the several State courts upon provisions of the State constitutions identical with, or analogous to, the fifth amendment of the Federal Constitution. None of these decisions, so far as I am advised, except *Republica v. Gibbs* (3 Yeates, 429) an early Pennsylvania case, held that the immunity was against any consequence of compulsory self-accusation other than the penalties and forfeitures inflicted by the law. No decision of any State has been called to my attention in which the constitutional provision was construed in the light of a statute granting complete immunity against prosecution. There are many States, however, in which the courts of last resort have held that similar constitutional provisions are not violated by the compulsory self-accusation of a witness, where a statute exists making it unlawful to use his disclosures in any future prosecution. It is interesting to note, however, that all of these cases related to offenses, the wisdom of which were then somewhat debated questions, and the prosecution of which was, to some extent, the triumph or defeat of the prevailing popular opinion. Thus, in Arkansas and Georgia, (*State v. Quarles* 13 Ark., 307, and *Higdon v. Heard*, 14 Ga., 255), the prosecution was under the gaming laws; in Indiana (*Wilkins v. Malone*, 14 Ind., 153), under the usury laws; in New York (*People v. Kelly*, 24 N. Y., 74), on an inquiry relating to bribery at an election; in New Hampshire (*State v. Nowell*, 58 N. H., 314), under the liquor laws; and still another New York case (*People v. Sharp*, 107 N. Y., 427, 14 N. E., 319), in a prosecution for bribery of aldermen. Some of these cases naturally aroused the indignation of the community in which the court sat. All of them were cases, doubtless, where the immunity claimed by the witness aroused no just sympathy. They each presented a situation where the fifth amendment, if construed broadly, seemed to offer an obstacle to a just administration of the criminal law. All of these cases are, however, expressly overruled in the Counselman case. There are other cases—especially the *Emery* case (107 Mass., 172), and *Cullen v. Com* (24 Grat., 624)—in which the supreme courts of the State where they arose held that the immunity granted by the constitutional provision was not simply against the use of the self-accusatory evidence in subsequent prosecutions; and the statutes to that effect did not, therefore, fully meet the constitutional requirement. These were the chief predecessors of the Counselman case, and to that extent met with the approval of the Supreme Court of the United States.

It is unquestionable that all of these cases, either in the matter decided or in the dicta of the opinion, commit the respective courts deciding them to the doctrine that a statute which in effect forecloses any prosecution on account of anything disclosed in the testimony meets fully the purpose of the constitutional provision. But the nature of these cases, and the fact that all but two of them have been partially disapproved by the Supreme Court, must be borne in mind.

The case at bar, like those cited, inspires no wish in the court to protect the witnesses. The interstate-commerce act is a law of the land, and the witnesses ask for the protection of the amendment under circumstances which indicate that, having violated it before, they have no intention to cease violating it now. It is the contest of people who disbelieve in the expediency of the law against the attempt to enforce it. The protection is asked, not so much to keep inviolate the secrets of the human breast, as to have immunity in further violating a law of the land. Judged by this specific instance, the fifth amendment, if construed broadly enough to afford the witnesses immunity against testifying, is an obstruction in the path of the administration of law. But the fifth amendment must not be judged by a single specific instance. It was placed in the organic law of the land for a purpose, and that purpose, when ascertained, must be enforced, howsoever it may affect sporadic cases, or even the great body of cases that may come before the court.

What, then, was the intention of the makers of the fifth amendment? This can only be ascertained by transferring ourselves, as nearly as possible, to the time in which they lived, and to the influences and conceptions that were then in vogue. From the earliest times the governmental systems of the Anglo-Saxon and the Latin races have been widely different. Among Latin peoples the chief thought has been for their welfare and advancement as a collective entity. Thus was depressed into comparative obscurity the rights or happiness of the individual. Among Anglo-Saxons, on the contrary, the individual always remained the most prominent purpose in governmental conception. The man never became blended in the mass, and his rights and personal happiness were not lost sight of in the movements of the time. Thus it was that while in Latin countries men could be lawfully carried off, their homes and property confiscated, their private papers given up to the public, and their memories searched by all the processes of menace and torture, in the British Islands the home was a castle into which the sovereign could not enter, the individual could not be compelled to respond to accusation, except upon indictment by his peers, and his private papers and memory were inviolate against search. The progress of the English-speaking people to the highest form of civil and religious liberty is not adventitious or accidental, but is due to this ennoblement of the individual in the conceptions and practices of the English law.

The same criminal procedure could not grow from such different soil. In the one the national entity—only another name for the ruling power—would brook no obstacle that blocked its way. Influenced by passion, revenge, fanaticism, and the myriad of civil and religious whims, it erected inquisitions and torture stalls, and sought thereby to explore the depths of the human breast, as it had already power to search the closets of human habitations. In the other the individual lived for himself and family, and, except within certain governmental relations, was in no sense legally interwoven with the rest of mankind. Government was for him, not he for the government. He could lock

his door against the messenger of the crown, and his breast against any search that would bring him within the crown's displeasure.

In the one grew up a criminal procedure that was almost purely inquisitorial, and whose history now appalls the enlightened conscience; in the other grew up a system purely accusatory, where the offending individual could lawfully stand in silence and demand proof from sources other than himself. In the one, the power of the sovereign pervaded every nook and corner of the individual; in the other, the power of the sovereign came only to the outward person of the subject and there stopped. This jealousy against any touch, until the right of individual liberty was shown forfeited, proved the corner stone of popular liberty.

But English public opinion, upon subjects both civil and religious, was in a constant state of change and ferment. The accepted views of to-day became the heresies and treasons of to-morrow. The view in power is always the right view, and is wishing for the means to enforce itself universally. It is no wonder, therefore, that sparks of the continental system landed on the English Islands and found spots where the fuel was ready for ignition. Early the ecclesiastical bodies, by the oath of *ex officio*, attempted, under penalties of excommunication, to extort confessions of heresy and sin from communicants. Later the star chamber and high commission put for a time in practice the same methods of compulsory self-disclosure of offenses against the state. However, the general English jealousy of personal sanctity resisted, and numerous statutes were passed guaranteeing the right of silence against the accusation of both the church and the crown. But, in the generation of Englishmen and English colonists in America who lived to see our Constitution adopted, and whose counsels were unquestionably embodied therein, there sprang up in England a formidable revival of prosecutions for the so-called seditious offenses. A paper, a speech, talk among friends, an understanding or confederacy to right some particular wrong, was made the basis of prosecuting the participants, if the sentiments therein prevailing could be distorted into any seeming hatred or contempt of the crown, the peers, the commons, or any of the national functionaries. Some of the men who were tried possibly deserved their punishment, but the illimitable opportunities thereby opened up to the outlaw every species of sentiment and progression that did not meet the views of the prevailing government shocked the Anglo-Saxon intelligence. The most stirring state trials of history occurred, in which the government was on the one side and the almost universal intelligence and conscience on the other. These trials, and their possible consequences on the fate of personal liberty were not history simply to the framers of the fifth amendment. Those men had lived through these trials, and taken on their coloring and excitement. They themselves, in their early plannings against the trespasses of the English Crown, had been exposed to the danger of like prosecution and punishment. In the shadow of such a menace, progress and personal safety must separate, unless the right of unbroken silence were among the immutable personal privileges. Nearly all of the ten amendments to the Constitution breathe this apprehension and erect against it the barriers of organic law. This is forcibly shown by the fact that the amendments were insisted upon by the States most jealous of the central General Government, and most apprehensive that such a Government might become the oppressor of their personal rights.

The privilege which the framers of the amendment secured was silence against the accusation of the Federal Government—silence against the right of the Federal Government to seek out data for an accusation. This privilege of silence was, as they believed, and as events then looked, in the interest of progress and personal happiness, as against the narrow views of adventitious power. Did they originate such privilege simply to safeguard themselves against the law-inflicted penalties and forfeitures? Did they take no thought of the pains of practical outlawry? The stated penalties and forfeitures of the law might be set aside; but was there no pain in disfavor and odium among neighbors, in excommunication from church or societies that might be governed by the prevailing views, in the private liabilities that the law might authorize, or in the unfathomable disgrace, not susceptible of formulation in language, which a known violation of law brings upon the offender? Then, too, if the immunity was only against the law-inflicted pains and penalties, the Government could probe the secrets of every conversation or society, by extending compulsory pardon to one of its participants, and thus turn him into an involuntary informer. Did the framers contemplate that this privilege of silence was exchangeable always, at the will of the Government, for a remission of the participant's own penalties, upon a condition of disclosure, that would bring those to whom he had plighted his faith and loyalty within the grasp of the prosecutor? I can not think so.

Happily, the day when this immunity is needed seems to be over. It is difficult for us who live in a time when there are few, if any, definitions of crime that do not meet with the approval of universal intelligence and conscience, to appreciate these conceptions of our fathers. The battle for personal liberty seems to have been attained, but, in the absence of the din and clash, we can not comprehend the meaning of all the safeguards employed. When we see the shield held before the briber, the liquor-seller, the usury-taker, the duelist, and the other violators of accepted law, we are moved to break or cast it aside, unmindful of the splendid purpose that first threw it forward. But, whatever its disadvantages now, it is a fixed privilege, until taken down by the same power that extended it. It is not certain, either, that it may not yet serve some useful purpose. The oppression of crowns and principalities is unquestionably over, but the more frightful oppression of selfish, ruthless, and merciless majorities may yet constitute one of the chapters of future history. In my opinion, the privilege of silence, against a criminal accusation, guaranteed by the fifth amendment, was meant to extend to all the consequences of disclosure.

The effectiveness of the statute of February 11, 1893, might well be questioned on another ground. It is a statute of pardon. Until the witness makes his disclosure he is chargeable with the offense within his personal knowledge. The pardon becomes effective only at the moment and upon condition of disclosure. But pardon is not necessarily unilateral. No person is compelled to accept the legislative or executive grace. Chief Justice Marshall, speaking for the Supreme Court, so held in *Wilson's Case* (7 Pet., 150), where a pardon was granted by the President for a capital offense. In the case at bar it must be assumed that the witness is guilty of some offense. In the absence of the statute of February 11, 1893, he has the undoubted constitutional right of silence. It is said that that right is taken away by the immunity or pardon extended by the statute. But he chooses not to accept such immunity or pardon. His refusal to answer the question is such refusal of acceptance. He prefers to stand upon his constitutional right

and take his chances of conviction rather than expose himself to the civil liabilities and the odium of self-confessed crime. It may be that the offense is of an ancient date, and has been succeeded by years of immaculate conduct and citizenship. Exposure, self-confessed exposure, would loose him his place in society, his good name in the world, and, like a bill of attainder, taint his blood and that of all who inherit it. It might well be that he would refuse to give up the sacred privilege of silence for a pardon. It is not difficult to suppose a case where the inquiry of the Government was not directed to his crime, but to something immeasurably less important and inconsequential. The benefit to society might be a trifle compared with the catastrophe to him and his descendants. I am not impressed with the belief that he has no right to stand upon the constitutional privilege of silence, and thus refuse the grace of the legislative or executive power. For the foregoing reasons the rule will be discharged.

SUPREME COURT OF THE DISTRICT OF COLUMBIA. HOLDING A CRIMINAL TERM.

DECISION BY ASSOCIATE JUSTICE C. C. COLE, OCTOBER TERM, 1894.

At the April term of said court indictments were found against Elverton R. Chapman and John W. Macartney for refusing to answer questions before the aforesaid special committee of the Senate. (See *ante*, p. 583.) To these indictments Messrs. Chapman and Macartney demurred, and on November 13, 1894, Justice Cole overruled the said demurrers.

In view of the fact some of the grounds of demurrer in these cases were broad enough to affect as well the validity of the indictments against all the other contumacious witnesses, one of the indictments—that against Chapman—with the grounds of demurrer thereto interposed thereto, and also the decision of Justice Cole, before whom the arguments were made, are given in full. On November 19, 1894, it was stipulated that the following additional grounds of demurrer might be filed and treated as part of the original demurrer, viz:

First. That Congress has no power to make the refusal of a witness summoned before a committee to testify a crime.

Second. That Congress has no authority to delegate the power to punish, for contempt of either branch or of a committee, to the courts, as is attempted in section 102, Revised Statutes United States.

INDICTMENT.

DISTRICT OF COLUMBIA, ss:

The grand jurors of the United States of America, in and for the District of Columbia, aforesaid, upon their oath do present:

That by the terms and provisions of the act of Congress approved on the first day of October, in the year of our Lord one thousand eight hundred and ninety, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," there was imposed generally a duty of five-tenths of one cent per pound upon all sugars imported into the said United States from foreign countries above number sixteen Dutch standard in color (that is to say, above number sixteen of a system of grading sugars in the different processes of purification and refinement, by numbers from six to twenty, according to color, and ranging from dark brown in the lower and least valuable grades to white and pure white in the higher and more valuable grades, which system was adopted in Holland many years ago, and has since been used as the basis of commercial transactions in sugars throughout the world; and which said number sixteen, according to said system, is considered in such transactions as the dividing line between what are denominated as the lower grades of sugar and the higher grades thereof, and which latter grades are the ones entering into common use and consumption); and that by said terms and provisions of said act certain materials from which the higher and more valuable grades of sugar can be produced by purification and refining, to wit, all sugars graded not above said number sixteen, Dutch standard in color, and all tank bottoms, all sugar drainings and sugar sweepings, sirups of cane juice (that is to say, sirups of cane juice produced from sugar cane), melada, concentrated melada, and concrete and concentrated molasses and molasses, so imported, were placed on the free list (that is to say, the importation of the same from foreign countries into the said United States was permitted free from duty); and that said act provided for the issue of licenses, and for the payment by the said United States of a bounty of two cents per pound to the producer of sugars from beets, and sorghum, and from sugar cane (that is to say, from sirups of cane juice produced from sugar cane), grown, and from maple sap produced in the said United

States, testing not less than ninety degrees by the polariscope, and of a bounty of one cent and three-fourths of one cent per pound to such producer upon sugars so produced as aforesaid, testing less than ninety degrees and not less than eighty degrees by the polariscope.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That on the first day of February, in the year of our Lord one thousand eight hundred and ninety-four, and for a long period of time prior thereto, to wit, for three years next preceding said last-mentioned day, the American Sugar Refining Company, a corporation organized under the laws of the State of New Jersey, was and had been extensively engaged in the said United States in the business of refining sugars, that is to say, in the business of producing for sale and consumption in the said United States the said higher and more valuable grades of sugar, from the said certain materials aforesaid, and from said sugars, produced in the said United States, upon the production of which it was provided by said act that bounties should be paid as aforesaid, and that said corporation has been since the said first day of February, in the year of our Lord one thousand eight hundred and ninety-four, and still is so engaged in said business, and that on the said first day of February, in the year aforesaid, the capital stock of the said corporation was of the par value of seventy-five millions of dollars, in shares of one hundred dollars each, and has since said last-mentioned day so continued to be and now is of said par value; and that on the said first day of February, in the year aforesaid, and during the long period of time prior thereto aforesaid, the said corporation was, and since the said last-mentioned day has been, and now is able, by reason of its great resources, and the extensive manner in which it was and is so engaged in business as aforesaid, to control and regulate and fix the price to be paid by consumers for the higher and more valuable grades of refined sugars in the said United States; and that the said corporation by reason of the premises realized great profits from the conduct of its said business, and that after the said first day of October, in the year of our Lord one thousand eight hundred and ninety, its said stock became and was, by reason of the premises, of a value largely in excess of its said par value, and so continued to be until the assembling of the Fifty-third Congress of the said United States, and until certain legislation was proposed in the House of Representatives of said Congress, which, if enacted into a law of the said United States, would destroy the ability of the said corporation to control, regulate, and fix as aforesaid the price to be paid by consumers for such higher and more valuable grades of sugar, and would greatly reduce the profits realized by said corporation from the conduct of its said business, and greatly reduce the value of the stock of said corporation; and that such proposed legislation resulted in the passage by the said House of Representatives of the bill hereinafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present: That on the said first day of February, in the year of our Lord one thousand eight hundred and ninety-four, the said House of Representatives of the said Fifty-third Congress passed a bill entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which said bill became thereafter variously known as the Wilson bill and as the tariff bill, and that said bill (which will be hereafter in this presentment called the tariff bill), after it had been so passed as aforesaid, by said House of Representatives, was sent by the said House of Representatives to the Senate of said Congress for the action of the said Senate thereon, and that said tariff bill was, according to the course of business in the said Senate, and on the second day of February, in the year last aforesaid, referred by said Senate to one of its committees, called the Finance Committee; and that the said tariff bill, as it so passed the said House of Representatives, as aforesaid, and was so sent to the said Senate, as aforesaid, provided for the total abolition of the duties imposed as aforesaid, by said act of Congress, approved the first day of October, in the year of our Lord one thousand eight hundred and ninety, upon all sugars above said number sixteen Dutch standard in color, and placed the same upon the free list, together with the said certain materials from which the higher and more valuable grades of sugar can be produced, to wit, all sugars graded not above said number sixteen Dutch standard in color, and all tank bottoms, all sugar drainings and sugar sweepings, sirups of cane juice (that is to say, sirups of cane juice produced from sugar cane), melada, concentrated melada, and concrete and concentrated molasses and molasses; and that said tariff bill, as it so passed the said House of Representatives and was so sent to the said Senate as aforesaid, further provided for the repeal of so much of the said act of Congress, approved the said first day of October, in the year of our Lord one thousand eight hundred and ninety, as provided for the issue of licenses and for the payment of bounties as aforesaid, to producers of sugar from beets, sorghum, and sugar cane grown and maple sap produced in the United States; and that the enactment into a law of the said United States of the said tariff bill, as it so passed the said House of Representatives and was so sent to the said Senate, would be greatly to the disadvantage of said corporation and would greatly diminish and

lessen the profits to be realized by it from the conduct of its said business; and that in consequence of the passage of the said tariff bill by the said House of Representatives and of the uncertainty at the time of such passage, as to what action would be taken by the said Senate thereon, the value of the stock of the said corporation became and was greatly impaired and lessened for the time being.

And the grand jurors aforesaid, upon their oath aforesaid, do further present: That on the twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-four, the said Finance Committee reported the said tariff bill to the said Senate, with certain proposed amendments, which the said Finance Committee recommended should be made thereto, and that said Finance Committee in so reporting said tariff bill to the said Senate recommended that the provision thereof by which all sugars graded above number sixteen Dutch standard in color, together with the said certain materials aforesaid, from which the said higher and more valuable grades of sugar can be produced, were placed on the free list, as aforesaid, be disagreed to by the said Senate and that in lieu thereof a provision of the tenor following be inserted, that is to say:

“All sugars, tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete and concentrated molasses testing by the polariscope not above eighty degrees shall pay a duty of one cent per pound, and for every additional degree or fraction of a degree above eighty and not above ninety degrees shown by the polariscope test, shall pay one one-hundredth of a cent per pound additional, and above ninety and not above ninety-eight degrees, for every additional degree or fraction of a degree shown by the polariscope test, shall pay a duty of two one-hundredths of a cent per pound additional, and upon all sugar testing above ninety-eight degrees by polariscope test, or above number sixteen by the Dutch standard in color, there shall be levied and collected a duty of one-eighth of one cent per pound in addition to the duty imposed upon sugars testing above ninety-eight degrees; molasses testing not above fifty-six degrees by the polariscope shall pay a duty of two cents per gallon; molasses testing above fifty-six degrees shall pay a duty of four cents per gallon.”

and that thereupon and upon the reporting of said tariff bill to the said Senate with amendments as aforesaid the stock of said corporation became greatly enhanced in value; and that on the seventh day of May in the year last aforesaid, certain other proposed amendments to the said tariff bill were submitted to the said Senate by an individual member of said Finance Committee and who belonged to the political party known as the Democratic party, and to which party a majority of the members of said Senate also belonged; and that said last-mentioned proposed amendments so submitted became and were known as Jones amendments, and that said Jones amendments were so submitted to the said Senate as aforesaid in pursuance of an understanding had between a majority of the members of the said Senate belonging to the said Democratic party, and that one of the said proposed amendments last mentioned provided for the striking out from said tariff bill as it so passed the said House of Representatives, and was so sent to the said Senate, of the provision thereof by which all sugars above number sixteen Dutch standard in color, together with the said certain materials aforesaid, from which the said higher and more valuable grades of sugar can be produced, were placed on the free list, as aforesaid, and that in lieu thereof a provision of the tenor following, be inserted, that is to say:

“On and after January first, eighteen hundred and ninety-five, there shall be levied, collected, and paid on all sugars and on all tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete and concentrated molasses, a duty of forty per centum ad valorem, and upon all sugars above number sixteen Dutch standard in color and upon all sugars which have been discolored there shall be levied, collected, and paid a duty of one-eighth of one cent per pound in addition to the said duty of forty per centum ad valorem; and all sugars, tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete or concentrated molasses, which are imported from or are the product of any country which at the time the same are exported therefrom pays, directly or indirectly, a bounty on the export thereof, shall pay a duty of one-tenth of one cent per pound in addition to the foregoing rates: *Provided*, That nothing herein contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the King of the Hawaiian Islands on the thirtieth day of January, eighteen hundred and seventy-five, or the provisions of any act of Congress heretofore passed for the execution of the same. That on and after January first, eighteen hundred and ninety-five, there shall be levied, collected, and paid on molasses testing forty degrees or less by the polariscope, and containing more than twenty per centum of moisture, and on molasses testing above forty degrees and not above fifty-six degrees polariscope, a duty of two cents per gallon; if testing above fifty-six degrees polariscope, a duty of four cents per gallon;” and that thereupon and upon the submission to the

said Senate of the said Jones amendments to the said tariff bill as aforesaid, the stock of the said corporation became still further enhanced in value.

And the grand jurors aforesaid, upon their oath aforesaid, do further present: That the said tariff bill from the time it was so sent to the said Senate as aforesaid, and the said proposed amendments thereto, from the time they were so reported, by the said Finance Committee to the said Senate, as aforesaid, and the said proposed amendments called Jones amendments, from the time they were so submitted to the said Senate as aforesaid, and until the seventeenth day of May in the year of our Lord one thousand eight hundred and ninety-four, were pending before and under consideration by the said Senate; and that on the said seventeenth day of May in the year last aforesaid, the said Senate passed and adopted a resolution of the tenor following, that is to say:

"Whereas it has been stated in the Sun, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill" (meaning thereby that in a certain newspaper called the Sun, published in the city of New York, in the State of New York, a statement had been printed in substance and to the effect that bribes had been offered to certain members of the said Senate, by persons or corporations or on behalf of persons or corporations, the profits of whose business would be lessened by the enactment into a law of the said United States of the said tariff bill, as it was so passed by said House of Representatives, and was so sent to the said Senate, as aforesaid, for the purpose of corruptly influencing the action of them, the members last aforesaid, in their capacities as Senators of the United States, in the matter of legislation upon the said tariff bill, so passed by the said House of Representatives and so sent to the said Senate by said House of Representatives as aforesaid, and for the purpose of corruptly inducing them, the members last aforesaid, as such Senators, to vote against the passage by the said Senate of the said tariff bill in the form in which it had so passed the said House of Representatives and had been so sent to the said Senate as aforesaid); and

"Whereas it has also been stated in a signed article in the Press, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party" (meaning thereby that in a certain newspaper called "The Press," published in the city of Philadelphia, in the State of Pennsylvania, a statement had been printed to which the name of "Holland" had been signed, and which statement was in substance and to the effect, among other things, that the amendments aforesaid whereby it was proposed to strike out the provisions aforesaid of the said tariff bill as it was so passed by the said House of Representatives and was so sent to the said Senate as aforesaid, placing upon the free list all sugars and the materials aforesaid from which refined sugars can be made, and to substitute in lieu thereof a provision for the imposition of duties as aforesaid upon the importation into the said United States of sugars and of said certain materials from which refined sugars can be made, had been made up by the said American Sugar Refining Company, and that the said corporation had been permitted to dictate the said amendments, so reported and proposed as aforesaid to the said Senate, in consideration of large sums of money contributed by the said corporation to campaign committees of the said Democratic party, to aid in the election of the candidates of said party for President and Vice-President in the last Presidential campaign, and to aid in the election to the said Senate and said House of Representatives of the candidates of said Democratic party, and in the fulfillment of pledges given to the agents and representatives of the said corporation, at the time of the contribution of the sums aforesaid, that if said Democratic party were successful in obtaining control of the said Senate and House of Representatives, and in electing its candidates for President and Vice-President that no legislation injurious to the interests of the said corporation and its business should be enacted): Therefore,

"*Resolved*, That a committee of five Senators" (meaning thereby five members of the said Senate), "be appointed to investigate these charges" (meaning thereby the said statements made in the said newspapers called "The Sun" and "The Press") "and to inquire further whether any contributions have been made by the said sugar trust, or any persons connected therewith, to any political party for campaign or election purposes, or to secure or defeat legislation" (meaning thereby whether the said American Sugar Refining Company or any person connected therewith and acting in its behalf, or in its interest, had paid over or given any sums of money to any person or committee of any political party or organization for the purpose of aiding in the election of the candidates of any such party or organization for President or Vice-President of the said United States during the last Presidential campaign, and for the further purpose of aiding in the election to said Senate and House of Representatives of the candidates of any such party or organization, and for the further purpose of securing the enactment of laws of the said United States favorable to the interests of said American Sugar Refining Company,

and for the further purpose of preventing the enactment of laws of the said United States unfavorable to the interests of said American Sugar Refining Company), "and whether any Senator has been, or is speculating in what are known as sugar stocks, during the consideration of the tariff bill now before the Senate" (meaning thereby whether any member of said Senate, had, during the period of the pendency of the said tariff bill before the said Senate, that is to say: between the said second day of February in the year of our Lord one thousand eight hundred and ninety-four and the said seventeenth day of May in the same year, and with a view to his personal gain, purchased stock of the said American Sugar Refining Company, the value of which said stock was liable to be affected and could be affected to the pecuniary advantage of such Senator, last aforesaid, by the efforts or acts of such Senator, last aforesaid), "and with power to send for persons and papers and to administer oaths."

"Resolved further, That said committee" (meaning thereby the committee to be appointed under said resolution) "be authorized to investigate and report upon any charge or charges which may be filed before it alleging that the action of any Senator" (meaning thereby any member of the said Senate) "has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation" (meaning thereby any attempt by corrupt and improper means, such as bribing or otherwise, to influence and affect the vote of said Senate, and the votes of its members in respect of the said tariff bill).

And the grand jurors aforesaid, upon their oath aforesaid do further present: That George Gray, a Senator from the State of Delaware; William Lindsay, a Senator from the State of Kentucky; Cushman K. Davis, a Senator from the State of Minnesota; Henry Cabot Lodge, a Senator from the State of Massachusetts, and William V. Allen, a Senator from the State of Nebraska, were duly appointed as such committee under said resolution, and of which said last-mentioned committee, the said George Gray was made chairman; and that in the issue of the said newspaper called "The Press" of the fourteenth day of May in the year of our Lord one thousand eight hundred and ninety-four, one of the statements referred to in said resolution, was printed, and that a certain portion of the said statement was of the tenor following, that is to say:

"When the bill" (meaning thereby the said tariff bill) "was before the subcommittee of the Finance Committee of the Senate" (meaning thereby before a subcommittee of the said Finance Committee) "some of the officers and managers of the sugar trust" (meaning thereby of the said American Sugar Refining Company) "established themselves in Washington" (meaning thereby in the national capital) "being in New York" (meaning thereby in the city of New York in the State of New York) "a part of the time and in Washington" (meaning thereby said Washington) "at frequent intervals;" and that a certain other portion of said last-mentioned statement was of the tenor following, that is to say:

"In the course of that conversation" (meaning thereby a certain conversation alleged elsewhere in said last-mentioned statement to have taken place between Henry O. Havemeyer, one of the said officers and managers of the said American Sugar Refining Company and certain members of the said Senate, and before the said Finance Committee so reported the said tariff bill to the said Senate as aforesaid) "it was said that if such a schedule as would be satisfactory" (meaning thereby an amendment to the said tariff bill, satisfactory to the said officers and managers of said corporation) "was adopted" (meaning thereby adopted by the said Senate) "or even reported" (meaning thereby reported by the said Finance Committee to the said Senate) "the price of sugar" (meaning thereby the price of the stock of said American Sugar Refining Company) "on the market would advance thirty points in thirty days" (meaning thereby that in that event there would be an advance of thirty dollars in thirty days in the market value of each share of the stock of said American Sugar Refining Company); and that a certain other portion of said last-mentioned statement was of the tenor following, that is to say:

"On the very day that Mr. Voorhees, the chairman of the Finance Committee" (meaning thereby the said Finance Committee) "denied in the Senate" (meaning thereby in the said Senate) "that any amendments" (meaning thereby amendments to the said tariff bill other than those so reported by said Finance Committee) "were proposed to the Senate's bill as originally reported by the Finance Committee" (meaning thereby the said tariff bill as originally reported with amendments by the said Finance Committee as aforesaid) the list of some four hundred amendments" (meaning thereby the said Jones amendments to said tariff bill) "as prepared by Senator Jones was in the hands of one of a member of the brokerage firm of Moore & Schley" (meaning thereby that before said Jones amendments had been submitted to the said Senate that copies of the same were in the hands of a member of a certain firm of bankers and brokers doing business in the said city of New York under the firm name of Moore & Schley); and that on the eighth day of June in the year of our Lord one thousand eight hundred and ninety-four, and at the Capitol, at the city of Washington, in the said District of Columbia, the said committee being duly assem-

bled under and in pursuance of said resolution, and for the purpose of conducting the inquiry and investigation by said resolution directed to be made, one Elverton R. Chapman did appear before the said committee for examination as a witness, the said Elverton R. Chapman having been by the authority of the said Senate duly summoned to appear as such witness before said committee to give testimony upon the matter under inquiry before the said committee, under the said resolution, and was then and there, to wit: at the time and place last aforesaid, duly sworn by the said George Gray, the chairman of said committee, and took his corporal oath as such witness that the evidence which he should give in and upon his said examination as such witness should be the truth, the whole truth, and nothing but the truth, and that the said Elverton R. Chapman did then and there, and at and upon the said examination of him, the said Elverton R. Chapman, before said committee, as such witness, depose, testify, and declare in substance that he, the said Elverton R. Chapman, before said committee, as such witness, depose, testify, and declare in substance that he, the said Elverton R. Chapman, was engaged in business as a banker and broker, and that he was a member of the said firm of Moore & Schley, who were a firm of bankers and brokers doing business in the city of New York in the State of New York; and that thereafter and on the ninth day of June in the year last aforesaid, and at the District aforesaid, the examination of the said Elverton R. Chapman as such witness before said committee was continued, and that thereupon and on said last-mentioned day and at the District aforesaid, the said Cushman K. Davis, on behalf of said committee, propounded to the said Elverton R. Chapman, as such witness as aforesaid, a question of the tenor following, that is to say:

“Mr. Chapman” (meaning thereby the said witness), “you are asked whether the firm of Moore & Schley” (meaning thereby the said firm of Moore & Schley) “has bought or sold what are known as sugar stocks” (meaning thereby stocks of the said American Sugar Refining Company) “during the month of February, eighteen hundred and ninety-four” (meaning thereby in the said year one thousand eight hundred and ninety-four), “and after the first day of that month, for or in the interest, direct or indirect, of any United States Senator?” (meaning thereby any member of said Senate);

and that the said Elverton R. Chapman did then and there, to wit, on the said ninth day of June in the year last aforesaid, and at the District aforesaid, willfully refuse to answer the said question, and did then and there, to wit: at the time and place last aforesaid, make a response to the said question of the tenor following, that is to say:

“I decline to answer that question”;

and that thereupon the said Cushman K. Davis, on behalf of the said committee, did then and there, to wit, at the time and place last aforesaid, propound another and further question to the said Elverton R. Chapman as such witnesses, of the tenor following, that is to say:

“Has the firm of Moore & Schley” (meaning thereby the said firm of Moore & Schley), “during the month of March, eighteen hundred and ninety-four” (meaning thereby the said year one thousand eight hundred and ninety-four), “bought or sold any stocks or securities known as sugar stocks” (meaning thereby stocks of the said American Sugar Refining Company), “for or in the interest, direct or indirect, of any United States Senator?” (meaning thereby any member of said Senate); and that the said Elverton R. Chapman did then and there, to wit, at the time and place last aforesaid, willfully refuse to answer the question last aforesaid, and did then and there, to wit, at the time and place last aforesaid, make a response thereto of the tenor following, that is to say:

“I decline to answer;”

and that thereupon the said Cushman K. Davis, on behalf of the said committee, did then and there, to wit, at the time and place last aforesaid, propound another and further question to the said Elverton R. Chapman, as such witness, of the tenor following, that is to say:

“Has the firm of Moore & Schley” (meaning thereby the said firm of Moore & Schley), “during the month of April, eighteen hundred and ninety-four” (meaning thereby the said year one thousand eight hundred and ninety-four), “bought or sold any stocks or securities known as sugar stocks” (meaning thereby stocks of the said American Sugar Refining Company) “for or in the interest, direct or indirect, of any United States Senator?” (meaning thereby any member of the said Senate); and that the said Elverton R. Chapman did then and there, to wit, at the time and place last aforesaid, willfully refuse to answer the question last aforesaid, and did then and there, to wit, at the time and place last aforesaid, make a response thereto of the tenor following, that is to say:

“I decline to answer;”

and that thereupon the said Cushman K. Davis, on behalf of the said committee, did then and there, to wit, at the time and place last aforesaid, propound to the

said Elverton R. Chapman, as such witness, another and further question, of the tenor following, that is to say:

"Has the firm of Moore & Schley" (meaning thereby the said firm of Moore & Schley), "during the month of May, eighteen hundred and ninety-four" (meaning thereby the said year one thousand eight hundred and ninety-four), "bought or sold any stocks or securities known as sugar stock" (meaning thereby stock of the said American Sugar Refining Company), "for or in the interest, direct or indirect, of any United States Senator?" (meaning thereby any member of the said Senate); and that the said Elverton R. Chapman did then and there, to wit, at the time and place last aforesaid, willfully refuse to answer the question last aforesaid, and did then and there, to wit, at the time and place last aforesaid, make a response thereto of the tenor following, that is to say:

"I decline to answer;"

and that thereupon the said Cushman K. Davis, on behalf of said committee, did then and there, to wit, at the time and place last aforesaid, propound to the said Elverton R. Chapman, as such witness another and further question, of the tenor following, that is to say:

"Is the firm of Moore & Schley" (meaning thereby the said firm of Moore & Schley) "at present carrying" (meaning thereby holding for an opportunity to sell the same to advantage) "any sugar stock" (meaning thereby stock of the said American Sugar Refining Company), "for the benefit of or in the interest, direct or indirect, of any United States Senator?" (meaning thereby any member of the said Senate); and that the said Elverton R. Chapman did then and there, to wit, at the time and place last aforesaid, willfully refuse to answer the question last aforesaid, and did then and there, to wit, at the time and place last aforesaid, make a response thereto of the tenor following, that is to say:

"I decline to answer;"

and that the said question first aforesaid, and the said several other and further questions last aforesaid, so propounded on behalf the said committee to the said Elverton R. Chapman as such witness by the said Cushman K. Davis, as aforesaid, were then and there, to wit, on the said ninth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and at the District aforesaid, pertinent to the inquiry then and there being made by the said committee under the resolution aforesaid, and were then and there especially pertinent to so much of said inquiry as had for its object the ascertainment, as matter of fact, whether any member of said Senate had been during the pendency of the said tariff bill before the said Senate, that is to say, between the said second day of February and the said seventeenth day of May, in the year last aforesaid, speculating in the stocks of the said American Sugar Refining Company, against the form of the statute in such case made and provided and against the peace and Government of the United States of America.

ARTHUR A. BIRNEY,

Attorney of the United States in and for the District of Columbia.

DEMURRER.

THE UNITED STATES
v.
ELVERTON R. CHAPMAN. } No. 19876.

Elverton R. Chapman, the defendant named to the indictment filed in the above-entitled case, appearing by his attorneys, Shellabarger & Wilson, only for the purposes of this demurrer, says that said indictment is bad in substance.

SHELLABARGER & WILSON.

NOTE.—The following propositions, amongst others, are intended to be argued in support of the foregoing demurrer:

1. That the Senate of the United States, as to all matters wherein, by the Constitution of the United States, it is endowed with, and empowered to exercise, judicial functions, as distinguished from political and diplomatic powers, which, under the Constitution, it may exercise, is a court or tribunal of limited and specifically defined jurisdiction; and in determining, in any given case, the question of the power or jurisdiction of the Senate to exercise any judicial functions, or to do any act under its alleged judicial powers, no presumptions are made in favor of its jurisdiction to do such act, or exercise such power, but, on the contrary, every requisite for the conferment of such judicial jurisdiction must appear on the face of the proceedings in which the alleged judicial act is performed. Otherwise such act is in law one without jurisdiction and void.

2. The only judicial powers conferred by the Constitution upon the Senate of the United States, as distinguished from its political and diplomatic powers, are:

(a) That the Senate may punish its members for disorderly conduct, or for failure to attend its sessions;

(b) Can decide cases of contested elections;

(c) Can determine the qualifications of its members;

(d) May try impeachments; and

(e) By a two-thirds vote expel a member.

3. The resolution under which the committee named in the indictment acted in subpoenaing the defendant, and in asking the questions which the accused declined to answer, fails to show, either expressly and affirmatively, or even argumentatively that the committee was empowered either to try any Senator for disorderly behavior, or for his expulsion, or for contempt, or for the infliction of any other punishment upon any member of the Senate, or to try any other of said questions committed to the judicial cognizance of the Senate; but, on the contrary shows that the committee was not authorized to make or conduct any such judicial inquiry touching any matter embraced in either question set out in said indictment.

4. The Senate, by reason of the foregoing principles, limiting its judicial jurisdiction, and, moreover, by reason of the provisions in the fourth and fifth amendments to the Constitution of the United States, making the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and protecting them against being required to be witnesses against themselves, as well as the other established principles of the laws and Government of the United States protective of the rights of the citizens, has no power or jurisdiction to demand of any citizen, subpoenaed to give testimony before one of its committees, the surrender, exhibition, or disclosure of any of the private papers, documents, or business of the citizen, otherwise than in the course of judicial proceedings, or in a direct suit prosecuted for that purpose; and, therefore, since the committee was not authorized by the Senate to enter upon, make, or decide any of the distinct and specific judicial questions aforesaid, of which, alone, the Senate can have judicial jurisdiction, and was not making any such judicial investigation or trial, it was without jurisdiction or power to ask, and had no authority to ask answers to, either one of the questions set forth in the indictment as those which the accused declined to answer, touching his private and confidential business; and his refusal to answer said question was not an offense against the provisions of section 102 of the Revised Statutes, nor against any other law of the United States.

5. The Senate, in exercising any of its judicial functions aforesaid, in order to be entitled to demand from a citizen the disclosure of his private papers and business, must give to its judicial proceedings such forms as are required in the exercise of all judicial powers and proceedings, before the right and jurisdiction to exercise such judicial powers, such as the compulsion of the production of private papers and affairs, can attach; that is to say, whilst, in the absence of legislation expressly requiring it, no technical pleadings, as such, may be necessary in order that the powers incident to judicial proceedings may attach to a proceeding in one of the houses of a legislature or of Congress, yet the radical and essential elements, necessary in order that any judicial powers may attach to the proceeding of such legislative body, must be in the case. For example, if the proceeding is directed to the trial of, and decision on, some alleged wrongdoing by a party over whom the investigating body has jurisdiction, then, before the exercise of judicial powers (such as compelling the disclosure by a witness of private papers or affairs) can attach to the proceeding there must be a prosecution—must be a designated party accused—must be a statement of the grounds of prosecution or action, definite and specific, enabling the accused to know whereof he is accused, and to prepare his defense and make it. A mere “drag net,” thrown out to catch somebody, anybody, everybody, or nobody, is no more a judicial “form” of proceeding, or the prosecution of a “case,” such as is presented by the Senate proceeding in the present case, than would a similar proceeding be a judicial proceeding in one of the courts, entitling such court to demand the exposure by witnesses of their private business.

6. That part of the resolution under which the committee acted, which says that “said committee be authorized to investigate and report upon any charge or charges which may be filed before it, alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to influence legislation,” not only does not furnish any answer to the points above stated, as to the necessity of a definite, specific, and distinct accusation and prosecution of some person or persons, but, on the contrary, shows that the Senate deemed a specific charge or accusation to be an essential prerequisite to a Senatorial prosecution or trial such as would entitle the committee to demand from witnesses the exposure of their private papers and affairs. It shows this last, because, before the committee was authorized to investigate any “charge or charges,” the resolution required that the “charge” should be “filed” before the committee, and should allege that the Senator had been “corruptly influenced.”

Since no such "charge" had been "filed" or made by anybody whomsoever, and no criminal conduct has been imputed by anybody, as to anybody over whom the Senate had jurisdiction, therefore, the condition of fact and of jurisdiction which said clause of the resolution shows the Senate designed should exist before anybody should be put upon trial on any "charge," had in fact never arisen at the time these questions were asked; and, therefore, for this additional reason, it is made to appear that the Senate committee was without jurisdiction to ask the questions which the accused declined to answer.

7. That, so far as the authority given to said committee, by said resolution of the Senate, is directed to the investigation of dealings in "sugar stocks" or "certificates" it looks and is confined to the investigation, by the Senate, into the private affairs of the citizens, and which dealings are not, in themselves, unlawful; and, whether unlawful or not, the courts alone have jurisdiction to try and dispose of any alleged wrongdoing and in such matters Congress has no jurisdiction over the same; and hence, the refusal by the accused to answer questions, as set out in the indictment, and which the committee had no jurisdiction to ask, was not an offense against said section 102 of the Revised Statutes, or any other law of the United States.

SHELLABARGER & WILSON,
For Defendant.

OPINION OF JUSTICE COLE.

The indictments in these cases, the United States against Elverton R. Chapman, and the United States against John W. Macartney, are substantially alike, and purport to charge an offense against the defendants under section 102 of the Revised Statutes of the United States, which provides that:

"Every person who, having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter of inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months."

The indictments briefly stated charge in apt and appropriate language that the American Sugar Refining Company is a corporation having a capital stock of \$75,000,000, divided into shares of \$100 each, that its business was, and is, the refining and production of the higher grades of sugar, upon which there was a duty, under the tariff law of October 1, 1890, from certain lower grades of sugar and materials which were upon the free list under said law, and from certain sugars produced in this country upon which bounties were paid under said law, and that said corporation by reason of its great resources and the extensive manner of its business, under the operations of said law was able to control, regulate, and fix the price for said higher grades of refined sugar, and that after the passage of the said law and by reason thereof its stock became largely enhanced in value because of its profits, and so remained until the proposed passage of the tariff bill introduced in and passed by the House of Representatives during the last session of Congress, and that the proposed removal of the said tariff and bounties by the last-mentioned proposed legislation, should it become a law, would be greatly to the disadvantage of said corporation and greatly lessen its profits, and that by the passage of said bill by the House the value of the stock of said corporation was greatly impaired and lessened; that said tariff bill as it passed the House was reported to the Senate on the 2d day of February, 1894, and by it referred to its Committee on Finance, and that said committee on the 20th day of March, 1894, reported said bill back to the Senate with certain proposed amendments, the effect of which, if adopted by the Senate and concurred in by the House, would be to place a duty upon the higher grades of refined sugar and the materials from which the same are manufactured, which report caused a great advance in the value of the stock of said corporation; and that on the 7th day of May, 1894, certain other proposed amendments to the said tariff bill were submitted to the Senate by an individual Democratic member of the said Finance Committee (to which political party a majority of the Senators belonged), known as the "Jones amendments," and that said last-mentioned amendments were submitted to the Senate in pursuance of an understanding amongst a majority of the Democratic members of the Senate, and that one of the proposed Jones amendments provided for the striking out from said tariff bill, as it passed the House, the provision which placed upon the free list the higher grades of sugar and the materials from which the same were manufactured, and placed a duty thereon, the effect of which last-mentioned report was to further enhance the value of the stock of said corporation, and that the said tariff bill and the proposed amendments were before

the Senate for its consideration from the times they were respectively reported to it, and on the 17th day of May, 1894, while the same were still pending and undisposed of, the Senate adopted the following resolutions:

"Whereas it has been stated in the Sun, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and

"Whereas it has also been stated in a signed article in the Press, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party: Therefore,

"Resolved, That a committee of five Senators be appointed to investigate these charges, and to inquire further whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes, or to secure or defeat legislation, and whether any Senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate, and with power to send for persons and papers and to administer oaths."

"Resolved further, That said committee be authorized to investigate and report upon any charge or charges which may be filed before it, alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation."

It is further alleged in the indictments that in pursuance of said resolution Senators Gray of Delaware, Lindsay of Kentucky, Davis of Minnesota, Lodge of Massachusetts, and Allen of Nebraska were appointed the committee authorized by the resolution, with Mr. Gray as chairman; that in the article referred to in the second paragraph of the preamble to said resolutions, it was charged that some of the officers and managers of the sugar trust, meaning thereby of said corporation, while said bill was before said Finance Committee, and before any of said amendments had been reported to the Senate, had established themselves in Washington; that in a conversation between Henry O. Havemeyer, one of the officers and managers of said sugar trust, and certain members of the Senate, it was said that if such a sugar schedule as would be satisfactory was adopted or even reported to the Senate, the price of the stock of said trust would advance \$30 per share in thirty days, and that on the very day that the chairman of the finance committee denied in the Senate that any amendments were to be proposed to the Senate bill as originally reported by the Finance Committee, the list of some 400 amendments as prepared by Senator Jones was in the hands of one of the members of the firm of Moore & Schley, stock brokers, with offices in New York and Washington; that on the 8th day of June, 1894, the said investigating committee was duly assembled for the purpose of making inquiry into the subject-matter of said resolutions, and the defendants, by the authority of the Senate, having been duly summoned, appeared as witnesses before said committee and were duly sworn as such, and testified that they were members of the said firm of Moore & Schley, stock-brokers, but declined to answer questions put by a member of said committee, whether the said firm had bought, sold, or carried any sugar stocks for or on account of any member of the Senate, directly or indirectly, while said bill had been pending in the Senate, the questions having been put so as to cover the months of February, March, April, and May, separately.

To these indictments demurrers have been filed, and in support of them the defendants' counsel contend, first, that the facts charged in the indictments do not constitute an offense under the statute above quoted, and, second, that the report and certificates mentioned in section 104 of the Revised Statutes are jurisdictional facts, and should have been set forth in the indictments. In support of the first contention in behalf of the defendants it is argued that section 102, while its language is broad enough to include and cover all matters whatsoever, should be construed to include only matters into which the Senate has lawful jurisdiction to make inquiry, and counsel for the Government do not controvert that position, and doubtless that is the proper construction of the section. It was not the intention of Congress by that section to enlarge or attempt to enlarge or define its own jurisdiction, but to provide a method of punishment of a witness who should attempt to impede in the manner stated in that section either House in the lawful exercise of its constitutional authority.

Counsel for the defendants contend, in support of the demurrer, that the Senate committee had no jurisdiction under the terms of the resolution set out in the indictments to inquire into the subject whether Senators had been dealing in the stock of the said corporation, generally known as sugar stocks, during the pendency of the tariff bill in the Senate, and that the said questions set forth in the indictments have no materiality or pertinency to any other question before the committee, and that consequently the defendants are guilty of no offense in declining to answer the questions put to them. It is not denied that the Senate might have jurisdiction to inquire into this subject, under certain circumstances, and, by a proper resolution,

confer that jurisdiction upon a committee; but the objection is that the facts and circumstances under which that jurisdiction might be exercised do not appear in this resolution.

It is said that in order to the proper exercise of this jurisdiction of inquiry into the private affairs of the citizen, so as to constitute it an offense on the part of a witness to refuse to answer a question, it should appear on the face of the resolutions that the information sought is material and pertinent for the consideration of the Senate in the aid of its judicial or legislative functions, and that it is the purpose of the Senate to make such use of it when obtained; that while formal pleadings are not necessary, there must be a substantial declaration or avowal in the resolutions of a definite object to be attained, such as the trial of definite charges against some designated person whom the Senate has the jurisdiction to try and punish, or the enlightenment of some specifically defined subject of legislation within its jurisdiction, and that the present resolutions contain neither of these requirements.

It is also argued that no inference can legally be drawn that the Senate intended to make any use of the information its committee was seeking from the indicted witnesses in aid of its judicial or legislative functions; that the existence of such purpose is jurisdictional and must appear in the record of the proceedings in the Senate by express declaration or avowal.

This last proposition is probably the most important one upon the consideration of these demurrers, for if it is well taken it is necessarily fatal to these indictments, there being no express avowal or declaration by the Senate in these resolutions of a purpose to make any specific use of the information when obtained. It is claimed by counsel for the defendants that this doctrine was held by the Supreme Court in the case of *Kilbourn v. Thompson* (103 U. S.). The first question decided in that case was that neither House of Congress possesses any general power to punish for contempt, and the second was that the subject-matter of the proposed investigation by the House, considered in that case, was judicial in its nature, to wit: The collection of a debt due the United States, and not legislative, and that the House had no power to legislate upon the subject-matter of the investigation, and therefore had no jurisdiction to proceed with it, and that consequently Kilbourn was not in contempt in refusing to answer the questions of the House committee. The first question determined in the Kilbourn case, to wit, whether either House of Congress has jurisdiction to punish as for contempt a witness failing to appear or testify before such House or one of its committees, and if so under what circumstances such power may be exercised, does not arise in these cases. The first question in these cases is whether Congress may declare it an offense, punishable by indictment in a court of competent jurisdiction, for a witness to decline to answer a proper and material question propounded by a committee of the Senate, acting under a proper resolution of that body, touching a matter in which it has the jurisdiction to inquire.

That the Supreme Court considers this a very different question from the first one decided in the Kilbourn case is apparent from its decision in the case of the *Interstate Commerce Commission v. Brimson* (154 U. S., 447). In that case it was held that while Congress may not confer upon the Interstate Commerce Commission the power to compel witnesses to testify before it, or punish them for contempt for failure to do so, that it is competent for it to confer upon the courts the jurisdiction either to compel such testimony or to punish for contempt for the failure to give it, or to punish the failure by indictment. (See p. 485, where Mr. Justice Harlan distinguishes between these questions and comments upon the Kilbourn case. (If Congress may make it an offense to fail to give proper evidence before a commission which it creates, it certainly may make it an offense to fail to do so in proper proceedings before either of the Houses of Congress. The interstate-commerce act conferred upon that Commission the power to inquire into the business and methods of all persons and corporations engaged in interstate commerce. In the case last above referred to it was contended among other things on behalf of the witnesses who refused to answer that they could not be required to disclose their private affairs before the Commission, and that the effort to compel them to do so was in violation of private right, as it is contended in these cases. Mr. Justice Harlan, answering the argument, uses the following language:

"As every citizen is bound to obey the law, and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon any one, summoned by that body to appear and testify, the duty of appearing and testifying, and upon any one required to produce such books, papers, tariffs, contracts, agreements and documents, the duty of producing them, if the testimony sought and the books, papers, etc., called for relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal ground, from doing what the Commission requests at his hands. These propositions seem to be so clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion."

Under this rule the first question is whether the Senate committee was 'legally entitled to investigate' the subject-matter mentioned in the resolutions? That necessitates the determination of the question discussed with so much ability in the argument, whether the resolutions show jurisdiction, and, as connected with that, whether the court is at liberty to draw any inferences upon that subject. And, as before stated, the counsel for defendants argue that the negative of this proposition was decided in the Kilbourn case, and in support of this refer to the language of that opinion wherein it is said:

"If, indeed, any purpose had been avowed to impeach the secretary, the whole aspect of the case would have been changed. But no such purpose is disclosed. None can be inferred from the preamble, and the characterization of the conduct of the secretary by the term 'improvident,' and the absence of any words implying suspicion of criminality, repel the idea of such purpose, for the secretary could only be impeached for 'high crimes and misdemeanors.'"

The language above quoted does not seem to have the broad effect claimed for it. It does not seem to be a declaration that no inference can legally be drawn in any case in favor of jurisdiction, but that the terms of that particular resolution precluded the inference that there was any intention on the part of the House to impeach the secretary. Can it be doubted that had the preamble recited that it was alleged or represented that in creating this liability the secretary had been guilty of an impeachable offense, that the court would have held that the committee had jurisdiction to proceed with the investigation into all facts relating to the conduct of the secretary in the premises, and his relations to the real-estate pool in question?

Another quotation from the opinion in the Kilbourn case, relied upon by counsel for defendants as showing that in order to confer jurisdiction upon the committee the resolutions should have contained a recital or declaration of some intended final action of the Senate upon the information sought, is as follows:

"The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong, or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any equal number of gentlemen interested for the government of their country. By 'fruitless' we mean that it could result in no valid legislation on the subject to which the inquiry referred."

This language does not seem to admit of the interpretation that in order to confer jurisdiction the resolution should have expressly declared the final action contemplated by the House, but rather that there was no possible constitutional action that the House or Congress could take in relation to the subject-matter of the inquiry. Having previously held that the language of the preamble excluded the idea of impeachment, the court holds that it was constitutionally incompetent for Congress to legislate upon the subject-matter of the resolution, as that was the collection of a debt due the United States, and the subject of judicial and not legislative action. That this was the ground of the decision is apparent from a statement of it by Mr. Justice Field in his opinion at the circuit in the case of *In re Central Pacific Railroad Company* (32 Fed. Rep., 241), where, in commenting upon the decision in the Kilbourn case, he says:

"In the Supreme Court the questions involved received great consideration, and it was held that the subject-matter of the investigation was judicial, and not legislative, and that there was no power in Congress, or in either House, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of the partnership, and, consequently, no authority to compel a witness to testify on the subject." (32 Fed. Rep., 252.)

The case under consideration by the learned justice arose upon an application by the Central Pacific Railroad Commission, appointed under an act of Congress to investigate the affairs of that company, to the United States circuit court for California for a rule against the president of that company to show cause why he should not be required to answer questions put to him by the commission, similar in nature to those in the Kilbourn case, and it was held that the Central Pacific Railroad Commission had no jurisdiction to make the inquiry, as the only relation existing between the United States and that company was that of creditor and debtor, bringing the case clearly within what was decided in the Kilbourn case.

In the case of *People ex rel. McDonald v. Keeler* (99 N. Y., 463), the court of appeals of New York had before it a question in all substantial particulars like the one raised by these demurrers, relating to the jurisdiction of the Senate committee under these resolutions, and the case of *Kilbourn v. Thompson* was pressed with great earnestness upon that court as having decided the point contended for here, to wit: That no inference could legally be drawn in support of jurisdiction beyond what was

expressly avowed or recited in the resolution authorizing the investigation, but that court, in stating the question decided by the Supreme Court in the Kilbourn case, uses the following language:

"In *Kilbourn v. Thompson* the court said: 'If any purpose had been avowed to impeach the Secretary, the whole aspect of the case would have been changed,' but the court held that the recitals in the resolution repelled any such idea, and that no hint of any intention of final action by Congress on the subject appeared in the resolution, and that on the argument no suggestion had been made of what the House of Representatives, or Congress, could have done in the way of remedying the alleged wrong; and they held that that was simply a fruitless investigation into the personal affairs of individuals, which could result in no valid legislation on the subject to which the inquiry referred, and that therefore the House had no authority in the matter."

After reciting the resolution in the New York case, the court of appeals proceeds as follows: "If the resolution had shown upon its face that the only purpose of the investigation was to satisfy the taxpayers of the State as to the truth of the charges, or to relieve the department of public works from reproach, and no further action was contemplated or could be had in the matter by the legislature, the cause would fall within the decision in *Kilbourn v. Thompson*." It seems, therefore, that the only matter decided in the Kilbourn case as to the jurisdiction of the House to proceed, was that it had no legislative jurisdiction of the subject-matter proposed to be investigated, and as the preamble of the resolution was couched in such terms as to preclude all idea of an intention to impeach, it had no jurisdiction to proceed with the investigation. It can not be considered as an authority that no presumption can legally arise favorable to jurisdiction or to the intention of the legislative body to proceed to final appropriate action, where the terms of the resolution are such as not to repel such presumption. It would seem to be inappropriate to apply to the Senate the rule governing in determining the jurisdiction of tribunals of inferior, special, and limited jurisdiction, by holding that every material fact necessary to confer jurisdiction should be set out in the record of its proceedings.

On the contrary, the more reasonable rule would seem to be that where the Senate has jurisdiction to investigate a matter for any purpose, the presumption should arise that it intends to make a final appropriate use of the information obtained in the course of the investigation. And this is in accordance with the holding of the court of appeals of New York in the case above referred to, where the principle is stated in the following language:

"We are bound to presume that the action of the legislative body was with a legislative object, if it is capable of being so construed, and we have no right to assume that the contrary was intended. The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers."

The conclusion, therefore, is that in order to confer jurisdiction on the committee it was not necessary for the resolutions to set forth or avow what final action the Senate had in contemplation upon the information to be obtained. It is sufficient to jurisdiction if it appears that the Senate had lawful authority to take any legitimate action, unless it also appears affirmatively upon the face of the resolutions that no final action was contemplated, and that the investigation was to be carried on simply for the purpose of vindication or animadversion, and it can not be contended that there is anything upon the face of the resolutions mentioned in the indictments to justify such a construction. It was said in argument by defendant's counsel that the resolution in Keeler's case required the committee to report with recommendations, thereby indicating an intention of further action, while no report is required by the resolution mentioned in the indictments to which the questions asked defendants applied.

But if the principle stated by the court in the Keeler case, that if any future legal action is possible it should be presumed that it is intended, is correct, the question whether a report is required is immaterial, as that only tends to show that future action is intended. But it is immaterial upon another ground. Under parliamentary law and usage a committee is required and expected to report its proceedings to the body from which it receives its appointment, whether the resolution of appointment requires a report or not. The only object of the appointment is to obtain a report. The principle is thus stated in Cushing's Parliamentary Law, paragraph 1930, second edition:

"The great purpose for which committees are appointed being the taking of such measures with reference to the subject-matter referred to their consideration, that when their acts and proceedings are agreed to, they become the acts and proceedings of the House, it is consequently the duty of committees both to proceed under the authority given them and to report their proceedings to the House."

The investigation ordered by the resolutions was intended to ascertain, first, whether bribes had been offered to certain Senators to induce them to vote against the pending tariff bill; second whether the said amendments in relation to a tariff on sugar had been reported to the Senate in consideration of money paid for campaign purposes of the Democratic party; third, whether any contributions had been made by the sugar trust or any person connected therewith to any political party for campaign or election purposes, or to secure or defeat legislation; fourth, whether any Senator had been speculating in what are known as sugar stocks during the consideration of the tariff bill then before the Senate; fifth, whether any Senator had been corruptly or improperly influenced in the consideration of said bill, and sixth, whether any attempt had been made to corruptly or improperly influence legislation.

That the facts sought in the fourth and fifth subdivisions of the subject-matter of the investigation would be pertinent, material, and important information for the Senate in the aid of both its judicial and legislative functions seems clear. The first, second, third, and sixth subdivisions are simply auxiliary to the others—in the nature of circumstantial evidence from which the main facts recited in the fourth and fifth might or might not be inferred, according to the nature of the facts and circumstances. Whether the reporting of the proposed amendments to the sugar schedule were influenced by the facts recited in the fourth and fifth subdivisions would be important information for the Senate to aid it in the exercise of its legislative functions on the question of the adoption or rejection of the amendments. It would also be important and material information to aid the Senate in the exercise of its judicial functions in deciding whether any Senator had been guilty of conduct justifying his censure or expulsion, of which the Senate is the sole judge. As a legal use of the information sought by the investigation was possible, the court is bound to presume, in the absence of anything in the resolutions to the contrary, that the Senate intended to make use of it when and if obtained.

The next point for consideration is whether the questions put to the defendants by the Senate committee were pertinent to the subject of inquiry before it. The object and tendency of them was to develop whether any Senator, and, if so, who, had been dealing in sugar stocks during the pendency of the tariff bill in the Senate. That was directly in point upon the fourth subject of inquiry, and might have had a circumstantial or collateral bearing upon the first, fifth, and sixth. If issues had been joined in any court upon the first, fourth, fifth, and sixth subjects of investigation, it, can not be doubted that the court would have ruled the questions set forth in the indictments propounded to the defendants relevant, material, and pertinent upon each issue. But it is said that the committee had no jurisdiction upon the two questions embraced in the second resolution, because the record does not show that any charges had been filed against any individual Senator. Whether any had been is probably not a jurisdictional question, but one of regularity of proceedings in control of the committee of the Senate. But, whether this be so or not, it is not material to decide, as the questions were pertinent, under the first and fourth subdivisions, which require no charges to be filed other than those contained in the preamble.

The next question is whether the defendants were entitled to be excused from answering the questions upon grounds personal to themselves. This was not directly claimed in argument, except so far as it was insisted that they could not be compelled to disclose their private business, and the case of the United States against Boyd (116 United States), and similar cases, were cited and insisted upon as applying to this case. But in the United States against Boyd it was sought to compel the defendant to make a disclosure of evidence to be used in proving and enforcing a forfeiture against him. The Supreme Court held that this could not be done. And it is also well established that a witness can not be required to make any disclosures that will tend to criminate him or bring him into public scandal or disgrace. But it is not contended that the defendants would, by answering, make disclosures having such tendency.

The nature of the subject of inquiry is such as to negative any such supposition. Their business was and is a perfectly legitimate one, and they were as much at liberty to deal with Senators as any one else. If there were any such dealings, and any impropriety in them, that impropriety was not on the part of the broker. The sole objection is that they can not be compelled to disclose their private affairs, except in regular judicial proceedings in a court of competent jurisdiction. But this objection is squarely met by the emphatic language of the Supreme Court in the case of the Interstate Commerce Commission Agent Brimson, hereinbefore quoted.

The conclusion from the foregoing considerations is that the Senate committee had jurisdiction of the subject-matter of the investigation, and that the questions put to the defendants were pertinent and material thereto, and that, in failing to answer them, if they did so, as charged in the indictments, they are guilty of a violation of section 102 of the Revised Statutes of the United States.

The only remaining question is whether the report of the committee to the Senate, and the certificate of the president of that body to the attorney of the United States for the District of Columbia, mentioned in section 104 of the Revised Statutes, should be set forth in the indictments.

It is claimed in behalf of the defendants that these are jurisdictional facts, and therefore should be averred in the indictment, and authorities to the point that where a new offense is created by statute and a mode of prosecution provided no other mode can be adopted are cited. But section 104 does not point out a mode of prosecution, but only a mode in which the fact of the commission of the offense shall be called to the attention of the district attorney and the grand jury. There are several other similar provisions in the statutes requiring particular officers of the Government, whose duties give them peculiar opportunities of knowledge of certain offenses, to call them to the attention of the proper district attorney, and it has never been held that such requirements are constituent parts of the offense or of the methods of their prosecution.

Section 102 makes refusal to answer a pertinent question a misdemeanor. The occurrence of the facts mentioned in this section confers jurisdiction on the grand jury to indict and on the court to try the delinquent party. Neither the report of the committee nor the certificate of the President of the Senate is necessary to complete the offense or the jurisdiction. They are simply convenient methods of information to the district attorney and grand jury, and not indispensable prerequisites to a prosecution, and were doubtless provided as a means to insure a prosecution, as otherwise the facts might not come to the knowledge of the district attorney and grand jury, the proceedings before such committees frequently being conducted with some degree of secrecy. But there seems to be nothing in the two sections to indicate any intent on the part of Congress that there should be no prosecution until and unless the report and certificate mentioned were made.

It follows that the demurrers to the indictments should be overruled.

After the foregoing decision by Justice Cole, the counsel for the defendants applied to the Court of Appeals for the allowance of an appeal to that court from said decision. In view of the peculiar character of the case, and the importance of the questions involved, said court of appeals granted the application, and thereafter further argument was had before said court, and thereupon the demurrers interposed in the said cases were again elaborately argued before said Court of Appeals. The District Attorney, A. A. Birney, and Holmes Conrad, Assistant Attorney-General, submitted the following brief on behalf of the United States:

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

ELVERTON R. CHAPMAN v. UNITED STATES.

[No. 2, special calendar. Criminal docket, supreme court District of Columbia, No. 19876.]

Brief for United States.

STATEMENT OF FACTS.

The indictment is based upon the act of January 24, 1857, as found in section 102, Revised Statutes of the United States, which reads:

"SEC. 102. Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months."

Section 104 reads as follows:

"Whenever a witness summoned as mentioned in section one hundred and two fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

The indictment shows that on October 1, 1890, an act of Congress was approved which provided, among other things, a duty to be paid upon all sugars above a cer-

tain grade which might be imported into the United States from foreign countries; that this legislation favorably affected the business of the American Sugar Refining Company and "its stock became and was by reason of the premises of a value largely in excess of its par value;" (3), that on February 1, 1894, the House of Representatives passed a bill known as the Wilson bill, which provided for the total abolition of the duties imposed by the act of 1890 upon all sugars above No. 16 Dutch standard, etc., and also repealed so much of said act as provided for the issue of licenses and payment of bounties to producers of sugar in the United States, and that the enactment into law of this bill as it passed the House of Representatives would be greatly to the disadvantage of the American Sugar Refining Company, and greatly to the injury of its business, and that in consequence of the passage of said bill by the House of Representatives, and of the uncertainty as to what action would be taken by the Senate thereon, the value of the stock of the said corporation became and was for the time being greatly lessened (3, 4).

March 20, 1894, the Finance Committee of the Senate reported the bill to the Senate, with certain amendments providing for duties upon sugars above No. 16 Dutch standard, the effect of which was to at once greatly enhance the value of the stock of the said corporation (4).

May 7, 1894, certain other amendments were submitted to the Senate by an individual member of the Senate in pursuance of an understanding had between a majority of the members of the Senate belonging to the Democratic party, the effect of one of which amendments was to increase the duties upon sugar to be imported; and thereupon and upon submission to the Senate of these last-mentioned amendments the stock of the said corporation became still further enhanced in value (5).

The bill with the above-mentioned proposed amendments was thus pending before the Senate on May 17, 1894, when that body adopted the resolution recited in the indictment. (See pp. 583, 800.)

The indictment further avers that the article in the press of May 14, 1894, contained the statement in effect that while the tariff bill was before the subcommittee of the Finance Committee of the Senate some of the officers of the sugar trust were in Washington; that at an interview between the president of the sugar trust and certain members of the Finance Committee it was stated that if a schedule satisfactory to the trust should be adopted the stock of the company would advance thirty points in thirty days (8); and that afterward, when the amendments were proposed to the Senate as aforesaid, the list thereof, as prepared by Senator Jones, was in the hands of the brokerage firm of Moore & Schley (8).

The defendant, Elverton R. Chapman, was a member of said firm of Moore & Schley, who are bankers and brokers doing business in New York (9).

He was summoned before the committee appointed under the resolution of May 17, 1894, and having been sworn as a witness (13) was asked to testify—

(1) Whether the firm of Moore & Schley had bought or sold what are known as sugar stocks during the months of February, March, April, and May, 1894, respectively, for or in the interest, direct or indirect, of any United States Senator (9, 10, 11).

(2) Whether Moore & Schley were then carrying any sugar stock for the benefit or in the interest, direct or indirect, of any United States Senator (11).

These questions he refused to answer and for such refusals he was indicted, and to the indictment interposed a general demurrer.

THE DEMURRER.

The objections made by the demurrer seem to be—

(1) That the Senate had not the constitutional right to authorize its committee to make the investigations provided for by the resolution of May 17.

(2) That the committee had not jurisdiction and authority to require answers to the questions propounded to the defendant because the resolution did not avow a purpose on the part of the Senate to take action within its constitutional functions upon such report as the committee might make.

(3) That the questions asked of the defendant required of him an exposure of his private affairs, and that he is protected by the Constitution of the United States from such inquiry.

(4) That Congress has no power to make the refusal of a witness summoned before a committee to testify a crime, and that, therefore, the act of 1857 is invalid.

(5) That the act of 1857 (sec. 102, Rev. Stats.), is a delegation of power to punish for contempts, and therefore invalid.

(6) That no "charge or charges" having been "filed" before the committee alleging that the action of any Senator had been corruptly influenced, etc., the committee were without jurisdiction to investigate under that part of the resolution which authorizes them to investigate and report upon any charge or charges which may

be filed before it, etc., and, therefore, were without authority to ask the questions which the defendant refused to answer.

(7) That the indictment is defective in that it does not recite that the President of the Senate certified to the district attorney the refusal of the witness to answer the questions.

ARGUMENT.

It is not denied that there are limitations to the power of investigation by the Senate or the House of Representatives, and that to render lawful an investigation by either House the subject-matter thereof must be such as to permit of the exercise in respect thereof of some of its constitutional powers. The principle we contend for is this: If the subject-matter of the inquiry ordered is such that the Senate may take action within its constitutional, legislative, or judicial functions, a committee acting upon such order is acting within its right, and a witness summoned to testify in respect of such subject-matter who refuses to answer questions propounded to him by the committee is guilty of the misdemeanor created by the act of 1857.

It will be assumed that in considering this question of the constitutionality of the act of the Senate the court will uphold the resolution unless its unconstitutionality is so clear as to leave no doubt upon the subject. That this is the true rule is well settled.

(*Cooley Const. Lim.*, pp. 216, 218, 219; *Grenada, ect., v. Brogden*, 112, U. S., 261; *Talbot v. Hudson*, 16 Gray, 422.)

In determining whether the inquiry ordered by the resolution in question was within the jurisdiction of the Senate we are not left to inference as to its purpose. Article V, section 2, of the Constitution provides:

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member."

Under this provision the resolution is amply justified, for the right to expel a member, by necessary implication carries with it the right to investigate and ascertain the facts through any appropriate means, before taking final action. (*McCullough v. Maryland*, 4 Wheat., 316; *Interstate Commerce Commission, v. Brimson*, 154 U. S., 477.)

The powers of Congress are not to be strictly construed. Chief Justice Marshall in *Gibson v. Ogden*, 9 Wheat., 1; 1 Story on Const., pp. 308, 309, 310, note.)

If under the resolution it was possible for the Senate to take subsequent action within its constitutional right, such as, for example, the expulsion of one of its members, the court will conclusively presume that it was the intention of the Senate so to act.

If an act may be valid or not according to circumstances, a court would be bound to presume that such circumstances existed as would make it valid. (*Talbot v. Hudson*, 16 Gray, 417.)

In a case very like the one at bar, and hereafter to be noticed in connection with other views of the case, the court said:

"We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended. The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers." (*People, ex rel. McDonald, v. Keeler*, 99 N. Y., 487.)

Starting then with the express constitutional power in the Senate to expel a member, and the presumption that it purposed to act within its powers, it would seem clear that the inquiry provided for by the resolution was within its right. One of the subjects of inquiry was "whether any Senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." The investigation under this head was one touching the conduct of members of the Senate, and the passage of the resolution indicated the opinion of that body that such speculation in stocks, the value of which was liable to be affected by the efforts or votes of Senators, was reprehensible in high degree, and would, when established by proofs, meet with prompt and severe reprehension. It might have punished such action by expulsion of the offender, for the right to expel is not limited to cases where felonies or criminal misdemeanors are charged, but extends to all cases where the offense is such as in the judgment of the Senate is inconsistent with the trust and duty of a member. (*Paschal's An. Const.*, p. 87; 1 Story on Const., 838; 1 Bl. Com., 163.)

The two Houses of Congress have several times acted upon this rule of law necessary to the maintenance of their dignity. In 1797 William Blount was expelled from the Senate for the offense of attempting to "seduce from his duty an United States Indian interpreter, and to employ him as an engine to alienate the affections and con-

fidence of the Indians from the public officers residing among them." (Sergeant's Const. Law, p. 286, 1822).

Commenting upon this case Mr. Sergeant says: "In the resolution the Senate declared him guilty of a high misdemeanor although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case. And it seems no law existed to authorize such prosecution."

The court will also recall the cases of Patterson, expelled from the Senate for complicity in the credit mobilier scandal, and of Whittemore, expelled from the House of Representatives for having sold a cadetship at West Point.

In this connection we direct the attention of the court to the eloquent presentation of the reasons for maintaining this right inviolate, to be found in the report of the committee in the case of John Smith, a Senator from Ohio, accused in 1807 of participating in the imputed treason of Aaron Burr. (1st Hall's Am. L. Jour., p. 459.)

Kilbourn v. Thompson.

The argument above made is not inconsistent with the decision in *Kilbourn v. Thompson* (103 U. S., 168), but is distinctly supported by that decision. The resolution in that case not only did not show either expressly or by implication that the House of Representatives intended to take action within its constitutional right, but the subject-matter of the resolution was of such nature that no constitutional action whatever, either legislative or judicial, could be taken upon it. It was upon this ground that the court placed its judgment. It said (p. 194):

"The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By 'fruitless' we mean that it could result in no valid legislation on the subject to which the inquiry referred.

"What was this committee charged to do?

"To inquire into the nature and history of the real estate pool? How indefinite! What was the real estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of it. Is it charged with a fraud against the Government? Here, again, the courts, and they alone, can afford a remedy. Was it a corporation whose powers Congress could repeal? There is no suggestion of the kind.

* * * * *

"Can the rights of the pool or of its members and the rights of the debtor be determined by the report of a committee or by an act of Congress? If they can not, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the Government?"

II.

NO AVOWAL OF PURPOSE NECESSARY.

The next contention of counsel, strenuously urged below, is that to render a resolution of inquiry valid it must affirmatively and specifically avow its aim and purpose to be in aid of the exercise of the judicial or the legislative powers of Congress.

It is confidently submitted that this novel proposition is not sustained by authority and that the language of the court in the *Kilbourn* case is not susceptible of the construction sought to be given it. In that case the court, while dealing with the subject-matter of the resolution in question, used the following language: "If indeed any purpose had been avowed to impeach the Secretary, the whole aspect of the case would have been changed. But no such purpose is disclosed. None can be inferred from the preamble, and the characterization of the conduct of the Secretary by the term 'improvident,' and the absence of any words implying suspicion of criminality repel the idea of such purpose, for the Secretary could only be impeached for high crimes and misdemeanors."

From the first sentence counsel draw all their argument that a resolution such as this must affirmatively declare its purpose. But if such an argument is to be had from the words "no such purpose is disclosed," may not an equally strong argument against such view and in favor of inference of jurisdiction be had from the words "none can be inferred?" The fair meaning of the paragraph is that a constitutional purpose is not disclosed either by avowal or by inference, and that disclosure in either way would satisfy legal requirements.

Such construction does no violence to the doctrine already urged that it is the duty of the courts to make all presumptions in favor of the validity of the act of the Senate, and is in harmony with precedent.

In *Talbot v. Hudson*, 16 Gray, 417, the question before the court was the validity of an act of the legislature authorizing the taking down and removal of a dam by commissioners appointed for the purpose.

The court said:

"It is quite obvious that the first step in this inquiry is to ascertain, if we can, under what head or branch of legislative power or authority the act in question falls. The intention of the legislature must be gathered mainly from the statute. There is no express declaration of the objects contemplated by it, but they are left to implication. Looking to the general structure of the act and the nature of its provisions we can not doubt that it was intended as an exercise of the right of eminent domain (p. 420).

* * * * *

"The ultimate purpose which the legislature had in view in passing the act under consideration does not distinctly appear by the terms of the act itself. But it may be inferred from the title of the act and the general scope of its provisions that it was intended," etc. (p. 422).

And further:

"We are, therefore, to look further into the probable operation and effect of the statute in question in order to ascertain whether some public interest or benefit may not be likely to accrue from the execution of the power conferred by it upon the defendant. If any such can be found, then we are bound to suppose that the act was passed in order to effect it."

The court further said:

"But it is to be borne in mind that in determining the question whether a statute is within the legitimate sphere of legislative action it is the duty of courts to make all reasonable presumptions in favor of its validity. It is not to be supposed that the law-making power has transcended its authority, or committed under the form of law a violation of individual rights. When an act has been passed with all the requisites necessary to give it the force of a binding statute, it must be regarded as valid, unless it can be clearly shown to be in conflict with the Constitution.

* * * * *

"Besides it is a well-settled rule of exposition that in considering whether a statute is within the limits of legislative authority, if it may or may not be valid according to circumstances, courts are bound to presume the existence of those circumstances which will support it and give it validity."

A case very nearly in point with that at bar, and in which most of the questions arising in this case were discussed, is *People, ex rel. McDonald, v. Keeler*, 99 N. Y., 463, already referred to.

In that case the senate of New York had passed a resolution for investigation of the department of public works in the city of New York, and appointed a committee to conduct the investigation. A witness summoned before the committee was asked certain questions as to the cost of coal sold by him to the commissioner of public works. He refused to answer, and left the committee room. He was arrested by order of the senate and committed to the custody of Keeler, the sheriff. He then sued out a writ of habeas corpus. The writ was dismissed by the court of oyer and terminer. On appeal to the supreme court the judgment was reversed and the petitioner discharged, and upon appeal to the court of appeals this later judgment was reversed after a most thorough examination upon precedent and principle.

The court fully reviewed *Kilbourn v. Thompson*, and construed that decision precisely as we have construed it, saying (p. 486):

"They held that that was simply a fruitless investigation into the personal affairs of individuals which could result in no valid legislation on the subject to which the inquiry referred, and therefore that the house had no authority in the matter."

In that case it is to be observed that (as declared by the court) "the legislature had no power to remove the commissioner or any officer of the department, and the only action the committee could recommend would be appropriate legislation to prevent a recurrence of frauds or irregularities if they were found to exist and to be of such nature that they could be prevented or rendered more difficult by legislation."

The only hint found in the resolution of purpose by the Senate to take action on the result of the labors of the committee was in the clause directing the committee to report its recommendations, but this was deemed sufficient.

As clearly shown by Judge Cole in his opinion in this case, this express direction to the committee to report was unnecessary, since it was its duty in any event to report its findings. (Cush. Parl. Law, par. 1930, 2d ed.)

WAS THE INQUIRY MADE OF THE WITNESS AN UNWARRANTED INTRUSION INTO PRIVATE AFFAIRS ?

The inquiry ordered and conducted was not an investigation of the private affairs of private persons (the witness), but of the actions of public officers whom the Senate had power to punish. It was not claimed when the questions were propounded and the witness refused to answer that to answer would or might subject him to criminal prosecution, or to a penalty or forfeiture, or bring him into public disgrace. The nature of the inquiry is such as to negative any such supposition. To sell to a Senator sugar stocks during the pendency of the tariff bill was no offense against either law or morals. In such transaction the purchasing Senator would alone offend, and the resolution was aimed only at such offenders. To exempt a witness summoned before a court of competent jurisdiction from giving testimony bearing upon the question in issue and which might determine the rights of the parties, only because such testimony might tend to expose his own private affairs, would put it in the power of witnesses to defeat absolutely judicial inquiries. There is no authority for such position.

Upon this point the case of *Interstate Commerce Commission v. Brimson* (154 U. S., 447) is a controlling force.

That case may be briefly stated as follows: The Interstate Commerce Commission of its own motion decided to investigate some complaints by inquiring into the business of certain railroad companies with reference to their rates of charges and alleged discriminations in favor of certain shippers, and their failure to file with the Commission copies of their contracts with other companies and of their schedules of rates, fares, and charges as required by the act of Congress (p. 465). The Commission required the companies in question to answer certain questions touching their business, etc. Not satisfied with the answer the Commission decided to make further investigation and subpoenaed William G. Brimson, president and manager of five of the companies, to testify. He was asked whether the companies of which he was president and manager were owned by the Illinois Steel Company. He refused to answer (467). A subpoena duces tecum was then issued, requiring one J. S. Keefe, secretary and auditor of the companies, to produce the stock books of the companies. He refused to do so.

The Commission then presented to the circuit court their petition praying an order commanding the witnesses to appear and to produce the books referred to. Objection was made as in this case to the effect: That "the investigation was in its nature judicial, and authority to make it could not lawfully be conferred by Congress upon the Interstate Commerce Commission, which is in its nature an administrative and not a judicial body," and that if Congress might do this it might "constitute an indefinite number of irresponsible citizens into detectives armed with inquisitorial authority and a roving commission. For the safety and liberty of the citizen, Congress ought not to have any such power" (451).

The court sustained the right of inquiry, saying:

"As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon any one summoned by that body to appear and testify the duty of appearing and testifying, and upon any one required to produce such books, papers, etc., called for as relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused on some personal ground from doing what the Commission requires at his hands. These propositions seem to be so clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion" (p. 476).

As will be seen, the only limitations stated by the court are:

- (1) That the testimony sought must relate to the subject under investigation.
- (2) That the matter must be one which the tribunal is entitled to investigate.
- (3) That the witness must not be excusable on personal grounds.

In these cases it can not be questioned that the inquiries made of the witness related to the subject under investigation, and we have endeavored to establish that the committee, acting for the Senate, had the right to investigate the matters stated in the resolution.

It seems equally clear that no ground of personal exemption in the witness exists which the law will recognize. The cases cited by counsel for the defendant are not hostile to this view. *Boyd v. United States*, 116 U. S., 616, only decided that "a compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is contrary to the Constitution. That case fairly exemplifies the other cases relied upon in the brief for defendant and is clearly distinguished from this." The answers the witness might have made to the questions by the committee could not have been used against him or his property in any imaginable way. (See secs. 859, 860, Rev. Stat. U. S.)

VALIDITY OF ACT OF 1857 (SEC. 102, REV. STAT.).

The next objection is that Congress was without power to make the refusal of a witness summoned before a committee to testify a crime.

Upon what ground this objection may rest is not clear, unless it be claimed that the act unlawfully deprives the Senate of the right to punish for contempts.

Contempts of courts have always been deemed to be misdemeanors.

It was early held indictable to disobey a judicial order. (1 Bish. Cr. Law, sec. 240.)

Such contempts are in the nature of a breach of the peace. (Ex parte Whitchurch, 1 Atk., 55.)

It is noticeable that in discussions before the court the argument has almost uniformly, if not always, been to the effect that statutes like this in question are not only constitutional, but that they afford the only method through which contempts such as this may be lawfully punished.

This was the position in the McDonald case, a statute of New York being quite similar to this section 102.

Did Congress, by the act of 1857, divest either House of its power to punish for contempts?

This act does not purport to strip the Senate of its power to punish for contempts. That power remains to it within the limits laid down in *Kilbourn v. Thompson*.

Proceedings for contempt and by indictment for the offense are entirely distinct, and neither proceeding is a bar to the other. They may be cumulative. (1 Bish. Cr. Law, Sec. 1067; *State v. Woodfin*, 5 Iredell (N. C.), 199; *State v. Williams*, 2 Spears, (S. C.), 22; *Foster v. Com.*, 8 Watts & S., 77; *Yates v. Lansing*, 9 Johns, 395.)

In the case last cited, Senator Platt said (p. 217):

"A contempt is an offense against the court as an organ of public justice, and a court rightfully punishes with summary conviction, and whether the same act be punishable as a crime or misdemeanor on indictment or not. To challenge a Senator or a judge may, under certain circumstances, be a contempt, but it is certainly indictable. A conviction or indictment will not purge the contempt, nor will a conviction for a contempt be a bar to an indictment. The offense may be double, and so are the remedy and the punishment. For instance, assaults in the presence of the court, rescues, expressions of libel upon the court or its suitors relating to suits pending, forging a writ, etc., are indictable offenses, and certainly they are also contempts. Contempts are never merged in statute offenses without express words for that purpose.

So, also, it is held that an act may be made indictable and punishable by both State law and Federal law. (*Fox v. Ohio*, 5 Howard, 410.)

So there is distinct authority in this District in the case of Samuel Houston, who, having been punished by the House of Representatives for an assault committed in the presence of the House, was afterwards indicted, convicted, and punished in the courts of the District for the same assault. (Vol. 2, Op. Atty. Gen., p. 668. See also 154 U. S. D., 478.)

THE OMISSION OF AVERMENT OF CERTIFICATE TO THE DISTRICT ATTORNEY.

It is objected that the indictment should show that the committee reported to the Senate the refusal of the witness to answer, and that the President of the Senate certified such refusal to the district attorney.

These are not jurisdictional facts.

Section 102 makes the refusal of a witness to answer a pertinent question a misdemeanor. Strike out section 104 and every element of the offense will remain, that section neither adding to nor taking from it, the only office of section 104 being to provide a convenient and certain way by which information of the offense will be conveyed to the prosecuting officer and the grand jury. It imposes duties upon the President of the Senate and upon the district attorney, and has no other effect. The offense being complete under section 102, it must be a matter of indifference to the witness by what means the knowledge of that offense is brought to the attention of the grand jury.

The case differs widely from those which hold that where an act not before punishable is made penal, and a mode of procedure is pointed out by which it is to be prosecuted, that mode only can be adopted. This is the doctrine of the case in 15 Pick., 231, apparently relied upon by counsel, and we do not quarrel with it. Section 104 does not provide a mode of prosecution, but only a means by which knowledge of an offense shall be communicated.

It is respectfully submitted that all the objections taken under the demurrer are groundless, and that the judgment of the court below should be affirmed.

A. A. BIRNEY,
United States Attorney, District of Columbia.
HOLMES CONRAD,
Assistant Attorney-General.

Messrs. Shellabarger and Wilson submitted a brief on behalf of the defendants, the salient points of which, with some of the authorities relied upon to sustain the same, are herewith appended, said brief being too lengthy to incorporate in full herein.

After a statement of the case and assignment of errors the brief sets forth under the following heads:

I.

These indictments must be quashed because the act upon which they are based is unconstitutional.

The point is made that sections 102 and 103 "are parts of one scheme, and they are inseparable," and further that—

The provisions of this act are, in substance and effect, precisely as though it had been enacted as follows: If any person, summoned before a committee of the Senate shall refuse to testify, even though his testimony may tend to criminate him, he shall be deemed guilty of a misdemeanor and shall be punished, etc.

It can not be doubted that such an act would be void, and we submit that the fact that the division into two sections does not relieve any part of it from this objection.

The intent of Congress is clearly expressed, and no part of the act can be judicially eliminated so as to relieve some other part of the virus that permeates the whole. (*Baldwin v. Franks*, 120 U. S., 679; *Prosser v. Illinois*, 116 U. S., 552; *Virginia Coupon Cases*, 114 U. S., 269; *United States v. Reese*, 92 U. S., 214.)

II.

The committee of the Senate had no jurisdiction to inquire into the private affairs of the citizen, or to ask and require answers to the questions upon the refusals to answer which these indictments are based.

If the act is constitutional, still it is no part of the design of section 102, under which these indictments purport to be framed, to make it a crime for a witness to refuse to answer any question put by a committee of either House of Congress, touching the lawful private business and affair of the witness, unless the committee has received from the House, under whose resolution it is proceeding, due authority to ask, and enforce answers to, such questions.

(2) It is not within the power or jurisdiction of either House of Congress to grant to one of its committees, appointed to investigate and report thereto, authority to compel a citizen to disclose and make public his lawful business transactions which are wholly private and personal, unless and except such authority affirmatively sets forth and shows the jurisdictional facts which are requisite in order to authorize the committee to compel such disclosures, and to punish, as contempt, the persistent refusal of the witness so to disclose; and which jurisdictional facts include an affirmative statement that such House requires such disclosure in order to enable it (a) to exercise some one or more of those judicial functions thereof, which are enumerated in paragraph 1 of the syllabus to the Supreme Court report of the case of *Kilbourn v. Thompson* (*infra*); or (b), possibly, that disclosure is, by such House desired, and is appropriate, to enable it to frame or decide upon the adoption of contemplated legislation.

(3) There is, in the resolution of the Senate under which the committee derived whatever authority it had to investigate and ask questions in the present case, a total absence of any and all indication that said investigation was resorted to with any design or expectation on the part of the Senate to use the results of the investigation either in aid of the exercise of its said judicial powers or in aid of any one or more of them, or in aid of any contemplated legislation; nor does it at all appear by said resolution that such invasion of the private affairs of the witnesses was required, or deemed necessary or appropriate, or was desired by the Senate, in order to aid in the execution of any of its constitutional powers or functions. Said resolution gave no authority to the committee whatever to pry into the private affairs of any citizen, or to punish him, or to cause him to be punished, for contempt in refusing to make answer to questions such as are set out in the said indictments, respectively.

(4) Hence said committee had no jurisdiction or power to ask, or to require answers to, such questions, or to either of them, and the refusal of the defendants to answer the same was not in violation of the provisions of section 102 of the Revised Statutes of the United States.

Limitations in the courts on power to enforce disclosure of private affairs.

Propositions are then stated which counsel claim "lead to the conclusion that the committee was without jurisdiction to ask the questions which the accused declined to answer."

The syllabus of the case in re Pacific Railway Commission (32 Fed. Rep., 241) is cited, as is the case of the Interstate Commerce Commission v. Brimson (154 U. S., 485), and Whitcomb's Case (120 Mass., 118). Other cases are also cited.

Restraints upon the courts created by the fourth and fifth amendments to the Constitution, protective of private rights and liberties, are equally applicable to proceedings in legislative bodies.

In support of the foregoing proposition the following cases are cited: Emery's Case (107 Mass., 172); Cooley's Constitutional Limitations, 4th edition, note 3, page 166; Cullen v. Commonwealth (24 Grat., 624); United States v. James (Fed. Rep., 261).

The rules protective of rights secured by the fourth amendment to the Constitution, which are applied in the courts, are capable of application to legislative investigations.

The above proposition discussed and the following citations made: Cooley's Constitutional Limitations, page 299, 1, page 369, 4th edition; Kilbourn-Thompson Case (103 U. S., 168); 2 Hare on the Constitution (top p. 855); late Justice Miller's lectures before Law School of Columbian University, edited by J. C. Bancroft Davis, especially "a careful review and compact statement of what was decided in the case of Kilbourn v. Thompson."

Contempt proceeding must take on the definiteness of judicial prosecution.

Our next proposition is closely kindred to our first proposition, and is that, when a legislature is proceeding in a prosecution for contempt, it must give to its proceedings the definiteness and other characteristics of a judicial prosecution, in a court, for a crime.

Contempt of court, or any other body entitled to punish for contempt, is a specific criminal offense. This is expressly decided in New Orleans v. Steamship Co. (20 Wall., 387, 392). See also Hayes v. Fisher (102 U. S., 122); Ex-parte Kearney (7 Wheaton, 39); Coggin v. Boies (34 Fed. Rep., 699).

In support of the foregoing proposition the following cases are cited: In re. Pacific Railway Commission (32 Fed. Rep., 850; 103 U. S., bottom of p. 197); Kemps, lessee, v. Kennedy (5 Cranch, 173); Kilbourn v. Thompson (103 U. S., 168; also bottom pp. 181, 189, 195, 197).

The court cites Williamson v. Berry (8 How., 495); Thompson v. Whitman (18 Wall., 457); Knowles v. Gas Light and Coke Co. (19 Wall., 58); Penoyer v. Neff (95 U. S., 714).

In 12 American and English Encyclopædia of Law (p. 274) is a statement of our present proposition, and a citation of authorities, as follows:

"Note 2. The facts which must be shown to exist before the matter can be within the jurisdiction of an inferior court, and which can be inquired into collaterally, are such as, in the absence of which, the court can not rightfully hear and determine any question touching the matter in controversy. (Staninan v. Davis, 1 Salk., 404; Kempe's Lessee v. Kennedy, 1 Pet., 30; Commissioners v. Thompson, 26 Ala., 568; State v. Ely, 43 Ala., 568; Hall v. Howd, 10 Conn., 514; Proctor v. State, 5 Harr. Del., 387; Gray v. McNeal, 12 Ga., 424; Chicago v. Rock Island Railroad, 20 Ill., 286; Commissioners v. Markle, 46 Ind., 96; Gay v. Lloyd, 1 G. Green, Iowa, 78; Wight v. Warner, 1 Doug., Mich., 384; State v. Metzgar, 26 Mo., 65; Bergen Turnpike Co. v. State, 1 Dutch., N. J., 554; People v. Koeber, 7 Hill, N. Y., 39; Clyde, etc., Plank Road Co. v. Parker, 22 Barb., N. Y., 323; Norwegian Street, 81 Pa. St., 349; Barrett v. Crane, 16 Vt., 246.)"

The same thing is expressly held in the recent case of Runkle v. United States (122 U. S., 555). The following extract from the opinion of the court, by the Chief Justice, in that case is conclusive:

"A court-martial, organized under the laws of the United States, is a court of

special and limited jurisdiction. It is called into existence for a special purpose, and to perform a particular duty. When the object of its creation has been accomplished it is dissolved. (3 Greenl. Ev., sec. 470; *Brooks v. Adams*, 11 Pick., 441, 442; *Mills v. Martin*, 19 Johns., 7, 30; *Duffield v. Smith*, 3 S. & R., 590, 599.) Such, also, is the effect of the decision of this court in *Wise v. Withers* (3 Cranch, 331), which, according to the interpretation given to it by Chief Justice Marshall in *Ex Parte Watkins* (3 Pet., 193, 207), ranked a court-martial as one of those inferior courts of limited jurisdiction whose judgments may be questioned collaterally. To give effect to its sentences, it must appear affirmatively and unequivocally that the court was legally constituted; that it had jurisdiction; that all the statutory regulations governing its proceedings had been complied with, and that its sentence was conformable to law. (*Dymes v. Hoover*, 20 How., 65, 80; *Mills v. Martin*, 19 Johns., 33.) There are no presumptions in its favor so far as these matters are concerned. As to them, the rule announced by Chief Justice Marshall in *Brown v. Keen* (8 Pet., 112, 115), in respect to averments of jurisdiction in the courts of the United States, applies. His language is: "The decisions of this court require that averment of jurisdiction shall be positive; that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred, argumentatively, from its averments. Their authority is statutory, and the statutes under which they proceed must be followed throughout. The facts necessary to show their jurisdiction and that their sentences were conformable to law, must be stated positively, and it is not enough that they may be inferred argumentatively."

The same thing will be found in 2 Freeman on Judgments, section 527, and cases cited; *Grignon's Lessee v. Astor*, 2 How., 319, 341; *Peacock v. Bell*, 1 Saund. (Wms. ed.), 73, 74; *Byrd v. State*, 1 How. (Miss.), 163, 173; *Harvey v. Tyler*, 2 Wall., 340; *Cooley Const. Lim.*, 4 ed., 508, 509, and note; 1 Bishop Crim. Procedure, note 3, section 236; 1 Bishop on Crim. Procedure, section 1169. See, also, 10 Conn., 514; 127 Mass., 474; 89 Ind., 422; 67 Md., 250; 105 Mass., 23; 2 Gray, 115; 4 Metcalf, 421; 18 Vt., 594; 12 Vt., 431.

The substance of all these decisions just cited as applied to the case at bar is obviously this, that since there is nothing, either in the resolution or elsewhere, authorizing the committee to make the investigation going to show that the results of the investigation were needed or to be used by Congress, or either House thereof, in exercising the judicial functions named in the first paragraph of the syllabus in the case of *Kilbourn v. Thompson*, or in framing and adopting legislation, and since, moreover, the private affairs of a citizen can not be wrested from him and made bare to the public unless one or the other of these two needs or purposes exists in the case, and is "avowed" in the resolutions directing the investigation, and justifies the compulsory disclosure of these private affairs and justifies punishment for contempt for persistent refusal to answer, and since the law is, as applied to a court of limited jurisdiction, like the Senate, that which is quoted by Chief Justice Waite from the opinion of Chief Justice Marshall, namely, that—

"The decisions of this court require that averment of jurisdiction shall be positive; that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from these averments. * * * The facts necessary to show their jurisdiction and that their sentences were conformable to law must be stated positively, and it is not enough that they may be inferred argumentatively"—

therefore the committee was wholly without power or jurisdiction to compel the disclosure of the private affairs of the citizen, as the indictment shows these defendants were required to disclose their private business.

Precisely here is the body and law of our case.

Other propositions are advanced, such as the following:

Holding below that jurisdictional facts will, without averment, be presumed.

Which the court refused to so hold.

Reliance of the court below on the case of the people ex. rel. McDonald v. Keeler.

Contrast of the Kilbourn resolution with the present one.

No presumptions in favor of guilt.

Presumptions were not allowed to create jurisdiction to imprison in the Kilbourn case.

Scope of the Kilbourn decision.

Other authorities and points.

Interstate Commerce Commission v. Brimson, 154 U. S., 447.

Section 102 of the Revised Statutes, under which these indictments are brought, is an attempt to delegate to the court the power of the Houses to punish for contempt, and is palpably unconstitutional for that reason.

These propositions are argued at considerable length and authorities cited in their support; but, as stated, it is impossible by reason of the length of said brief and the present condition of this compilation to incorporate more, while a full statement of "the body and law of our case" has been given in full.

The following supplemental brief was then submitted by the district attorney on behalf of the United States, viz:

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

ELVERTON R. CHAPMAN v. UNITED STATES.

[No. 2, special calendar. Criminal docket, Supreme Court District of Columbia, No. 19876.]

Supplemental Brief for United States.

SECTION 102 CONSTITUTIONAL.

Counsel, in their brief, raise a question of grave importance not discussed in the court below, and perhaps not sufficiently covered by the principal brief.

They claim section 102 to be unconstitutional:

- (1) Because section 103 is or may be unconstitutional.
- (2) Because section 102 is, in its terms, applicable to any witness who may refuse to answer any pertinent question, and does not in terms except inquiries to answer which might tend to criminate or subject to forfeiture.

We answer: Section 102 is complete within itself and has no necessary connection with the following section. Their subjects are not only separable, but they are actually separated upon the statute book.

The rule is settled that in a statute which contains invalid or unconstitutional provisions, if the valid and invalid are capable of separation only the latter are to be disregarded. (*Albany County v. Stanley*, 105 U. S., 305; *Presser v. Illinois*, 116 U. S., 252.)

In all cases cited by counsel to support their argument the above doctrine is not only recognized but asserted. A brief review of them will show that they do not even tend to support the defense.

United States v. Reese (92 U. S., 214). This was the case involving the constitutionality of the civil-rights act.

By the fifteenth amendment Congress was authorized to pass laws to prevent the States from giving preference in the matter of suffrage to one citizen over another "on account of race, color, or previous condition of servitude." The third and fourth sections of the civil-rights act did not refer to these conditions or any of them, and manifested no intention to confine its effect to the terms of the fifteenth amendment.

The sections were held void; the court saying:

"We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are not in the section, but by inserting those that are not now there. Each of the sections must stand as a whole or fall together" (221).

Virginia coupon cases (114 U. S., 269). This case is of controlling effect upon this question, the court holding squarely that a statute may be unconstitutional in its application to a particular subject and otherwise perfectly valid. At page 295 the court said:

"And it is no objection to the remedy in such cases that the statute whose application in the particular case is sought to be restrained is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right; for the cases are numerous where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States."

Presser v. Illinois (116 U. S., 252, 263). The first paragraph of the syllabus is: "The doctrine that statutes unconstitutional in part only will be upheld as to what is constitutional, if it can be separated from the unconstitutional provisions, reasserted."

In that case certain sections of an act were declared valid even though other sections might be held invalid.

Baldwin v. Franks (120 U. S., 679). In this case the court holding a statute void in its application to citizens of a State intimated that it might be good in the Terri-

tories, thus distinctly recognizing the doctrine that where no unconstitutional provisions appear upon the face of the statute, it will be declared invalid only as to those subjects or classes of persons which are exempt by the Constitution from such legislation.

Packet Company v. Keokuk (95 U. S., 89), also applies this doctrine. The court, speaking of an ordinance of the city, said: "To the extent to which they [the plaintiffs] are affected by it there is no valid objection to it."

In the *Supervisors v. Stanley* (105 U. S., 305), the question was whether a State law authorizing the taxation of shares in banks was unconstitutional as conflicting with the national banking act. The court said:

"Accepting, therefore, as we must, the act of 1866, as construed by the court of appeals of New York, as not authorizing any deduction for debts by a shareholder of a national bank, is it for that reason absolutely void? This cannot be true in its full sense, for there is no reason why it should not remain the law as to banks or banking associations organized under the laws of the State, or as to private bankers, of which there no doubt exists a large number of both classes.

"What is there to render it void as to a shareholder in a national bank, who owes no debts which he can deduct from the assessed value of his shares? The denial of this right does not affect him. He pays the same amount of tax that he would if the law gave him the right of deduction. He would be in no better condition if the law expressly authorized him to make the deduction. What legal interest has he in a question which only affects others? Why should he invoke the protection of the act of Congress in a case where he has no rights to protect? Is a court to sit and decide abstract questions of law in which the parties before it show no interest, and which, if decided either way, affect no right of theirs?

"It is very difficult to conceive why the act of the legislature should be held void any further than when it affects some right conferred by the act of Congress.

"There is no difficulty here in drawing the line between those cases to which the statute does not apply and to those to which it does, between the cases in which it violates the act of Congress and those in which it does not. There is, therefore, no necessity of holding the statute void as to all taxation of national-bank shares, when the cases in which it is invalid can be readily ascertained on presentation of the facts."

To apply the doctrine of these cases to the case at bar, no provision is found in section 102 which is repugnant to the Constitution. Section 103, which may be so repugnant, may be stricken out and complete effect given the intention of the legislature. Section 102, valid on its face, will not be declared void as to all persons because some possible witness in some supposititious case might lawfully claim to be constitutionally protected from answering some imagined question on the ground that to do so might criminate him.

A. A. BIRNEY,
United States Attorney, District of Columbia.

The opinion of the court of appeals was delivered by Mr. Chief Justice Alvey, and, as reported by the Washington Law Reporter, in its issue of January 10, 1895, is as follows:

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

ELVERTON R. CHAPMAN v. THE UNITED STATES.

JOHN W. MACCARTNEY v. THE UNITED STATES.

1. Section 102, Revised Statutes of the United States, providing that any person summoned to testify upon any matter under inquiry before either House of Congress, or a committee thereof, who shall refuse to answer questions pertinent to the matter under inquiry shall be deemed guilty of a misdemeanor, and punished as prescribed in said section, is constitutional and valid.
2. A statute will not be condemned as unconstitutional if by any reasonable construction of its terms it can be upheld as constitutional and valid.
3. The act of 1857 (embodied in the Revised Statutes as section 102 et seq.) can not be construed as an attempt by Congress to divest itself of and relegate to the courts the power and jurisdiction, incident and belonging to it as a legislative body, to punish for contempts, and therefore void.
4. The existence of the inherent power in the Houses of Congress to punish for contempts, in cases to which their power properly extends, did not preclude the passage of the act of 1857, in the exercise of the ordinary legislative power of the two Houses, prescribing additional penalties to those already existing by virtue of the inherent powers of the Houses as legislative bodies.

5. Neither House of Congress is invested by the Constitution with a general power to punish for contempt; but their powers in such cases are limited and restricted to such matters as they have jurisdiction to inquire into.
6. A statute good on its face, but which, by reason of its general and comprehensive terms, may be susceptible of an unconstitutional application in certain cases that may arise, is not thereby rendered void; but the statute will be allowed full force and operation as applicable to all cases rightfully and constitutionally within its provisions.
7. Section 102, Revised Statutes of the United States, is not necessarily to be read in connection with section 103; but the former section stands alone, and makes a complete provision by its own terms, and it is in no manner dependent upon the latter section.
8. It was within the power and jurisdiction of the Senate to make the inquiry called for by the resolution of May 17, 1894, as to charges of bribery, etc., made by certain newspapers against members of the body, and as to contributions made by the sugar trust for campaign purposes, and also as to whether any Senator had, pending the consideration of the tariff bill in that body, speculated in what are known as sugar stocks.
9. Having power and jurisdiction of the subject-matter of inquiry, the Senate, by its committee, had full power to compel the attendance of witnesses, and to require them to answer any questions pertinent to the matter of inquiry embraced by the resolutions.
10. The questions propounded to appellant, as to whether or not, during the time the tariff bill was under consideration by the Senate, he had bought or sold any sugar stocks for any Senators, or was carrying any of such stocks for any Senator, were pertinent to the subject-matter of inquiry, and his refusal to answer was at his peril, and he must abide the consequences of his refusal.

Nos. 405 and 406. Filed January 7, 1895.

Appeals from orders of special term of the supreme court of the District of Columbia, Criminal Nos. 19985 and 19988, Cole, J., overruling demurrers to indictments. Affirmed.

Messrs. Shellabarger & Wilson for appellants.

Mr. A. A. Birney, United States attorney, for appellees.

Mr. Chief Justice Alvey delivered the opinion of the court:

This case comes into this court on an appeal specially allowed from the judgment of the court below, overruling a demurrer to the indictment against the appellant.

The appellant was indicted under section 102 of the Revised Statutes of the United States, providing for the prosecution and punishment of contumacious witnesses summoned to give testimony before either House of Congress or committees thereof. It is averred in the indictment that the appellant was summoned and appeared as a witness before a special committee of the Senate of the United States, in relation to a matter of inquiry before said committee, and that he refused to answer questions pertinent to the matter of inquiry referred to such committee.

The section of the Revised Statutes under which the indictment was found is as follows:

"SEC. 102. Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months."

In connection with the foregoing section 102 it is proper to read section 104 of the Revised Statutes, which is as follows:

"SEC. 104. Whenever a witness summoned as mentioned in section 102 fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

At the time the committee was raised and the subject-matter of inquiry was referred to it, the Senate had under consideration and debate the tariff act recently passed, known as the Wilson bill, with a very large number of proposed amendments thereto, reported from the Finance Committee of that body on the 20th of March, 1894; and among these amendments thus reported were certain proposed amendments providing for duties on sugar, different from the provisions in the bill as it had been passed by the House of Representatives and sent to the Senate. In the consideration of this matter, and in the rates of duties that might be fixed to be paid on imported sugar, it was supposed that the American Sugar Refining Company was largely interested

and that the market value of the stock of that corporation would be materially affected, the one way or the other, by the ultimate action and judgment of the Senate. In this state of affairs the matter became a topic of heated discussion with the public, and the press of the country teemed with imputations of bad faith and violated pledges, and some to the extent of charging attempted bribery and corruption, and that certain Senators were yielding to corrupt influences, and were acting, and intended to act, in a manner derogatory to their high duties of Senators and legislators of the nation. With these charges and imputations daily repeated, the Senate was impelled by a proper sense of duty to itself and the country to institute the proper proceedings for maintaining its dignity, integrity, and purity as an important branch of the legislative department of the Government. For this purpose, and acting upon the immediate inciting cause of certain publications recited in the preamble, the following preamble and resolutions were passed, on the 17th of May, 1894, raising a special committee, and clothing it with power of full investigation:

"Whereas it has been stated in the Sun, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and,

"Whereas it has also been stated in a signed article in the Press, a newspaper published in Philadelphia, that the sugar schedule has been made up, as it now stands in the proposed amendment, in consideration of large sums of money paid for campaign purposes of the Democratic party: Therefore,

"Resolved, That a committee of five Senators be appointed to investigate these charges, and to inquire further whether any contributions have been made by the sugar trust, or any persons connected therewith, to any political party for campaign or election purposes, or to secure or defeat legislation, and whether any Senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate; and with power to send for persons and papers, and to administer oaths.

"Resolved further, That said committee be authorized to investigate and report upon any charge or charges which may be filed before it, alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation."

Investigation was commenced, and according to the averments of the indictment in the course of the investigation by the committee, the appellant was produced as a witness, being a member of a firm of stockbrokers in the city of New York, dealing in the stock of the American Sugar Refining Company, and was asked by the committee, or a member thereof for the committee, whether the firm of Moore & Schley, of which the witness was a member, had bought or sold what were known as sugar stocks, during the month of February, 1894, and after the first day of that month, for or in the interest, directly or indirectly, of any United States Senator; had the firm, during the month of March, 1894, bought or sold any stocks or securities known as sugar stocks, for or in the interest, directly or indirectly, of any United States Senator; had the said firm, during the month of April, 1894, bought or sold any stocks or securities known as sugar stocks, for or in the interest, directly or indirectly, of any United States Senator; had the said firm, during the month of May, 1894, bought or sold any stocks or securities known as sugar stocks, for or in the interest, directly or indirectly, of any United States Senator; was the said firm at that time carrying any sugar stock for the benefit of or in the interest, directly or indirectly, of any United States Senator. But the appellant, then and there, to wit, on the 9th day of June, 1894, each and all of said questions willfully refused to answer; and all of which said questions are averred to have been pertinent to the inquiry then and there being made by the committee under the resolution.

This, so far as we are informed, is the first case of an indictment found under section 102 of the Revised Statutes, or the act from which that section was formed. There have been many cases of contempt, on the part of witnesses, for refusing to answer questions on inquiries instituted by the Houses of Congress, since the passage of the original act of 1857, from which sections 102, 103, and 104 of the Revised Statutes are taken; but in no case prior to the present, so far as we are informed, have the proceedings reached the form of an indictment.

There is no serious objection urged to the form of the indictment. The great effort on the part of the appellant has been to show, and which has been urged with great ability, that the provisions of the statute, as embodied in section 102 of the Revised Statutes, are unconstitutional and void; and that the scope and nature of the inquiry authorized by the resolutions of the 17th of May, 1894, were not within the limits of the power of the Senate of the United States, and therefore void.

In support of the demurrer to the indictment several positions have been strongly and ingeniously urged in argument; but we shall consider and determine the case as fully embraced by three principal questions—

(1) "Is the section 102 of the Revised Statutes of the United States constitutional and valid?"

(2) "Was the inquiry directed by the resolutions of the 17th of May, 1894, within the power of the Senate to execute by requiring witnesses to testify, and—

(3) "Were the questions propounded to the appellant, the witness, pertinent to the subject-matter of inquiry that the committee was charged to investigate?"

If either of those propositions be resolved in the negative it would follow that the demurrer should have been sustained; but, on the other hand, if they are all resolved in the affirmative, it results that the demurrer was properly overruled.

(1) With respect to the first of these questions, we can entertain no doubt. The section of the Revised Statutes brought into question, with some unimportant omissions and changes of phraseology, embodies the first section of the act of Congress of the 24th of January, 1857, entitled "An act more effectually to enforce the attendance of witnesses on the summons of either House of Congress, and to compel them to discover testimony." (11 Stat., 155.) The history of Congress is full of instances where difficulties had been experienced in compelling unwilling and contumacious witnesses to make disclosure of facts essential to Congressional action; and it was found that the ordinary and incidental powers that pertained to the Houses of Congress in their separate capacities were quite inadequate to meet the exigencies of many of the cases that occurred. It was for the remedy of this evil that the act of 1857 was passed.

That Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions can not admit of serious question. Congress is invested with all the legislative power of the Government, and each House also with certain other powers, not legislative in their nature; and it is expressly provided that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested in it. (Const., art. 1, sec. 8, par. 18.) Under this grant of power, what more natural and appropriate, as a means of executing its powers and indeed necessary, than a statute providing for the discovery of evidence as the basis of action, and prescribing a punishment for those who contemn the authority of the body, and, by their contumacious conduct, obstruct the lawful exercise of its functions. We have no doubt of the power of Congress in this respect.

It has been, however, strongly urged in argument that the terms of the section 102 are sufficiently broad and comprehensive to include a class of witnesses protected and exempted by the provisions of Article V of the Constitution, and especially so urged when read, as it should be, in connection with the next succeeding section 103 of the Revised Statutes; and therefore the section is void in toto. But it is not pretended that the appellant belongs to the class of witnesses contemplated by the article of the Constitution referred to; and if the contention of the appellant were conceded to be correct, as applied to a class of witnesses under different conditions, it would not follow necessarily that the statute should be stricken down in its entirety because it may be susceptible of an unconstitutional application in certain cases that may possibly arise. This is not reasonable, nor is it in accordance with the rule of interpretation adopted by the Supreme Court of the United States as applied to a statute good on its face, but where, by reason of its general and comprehensive terms, it may be made, by construction, to apply to objects forbidden by the Constitution. In such case the statute will be allowed its full force and operation, as applicable to all cases, rightfully and constitutionally within its provisions, but such application will be sustained as to those objects simply to which the statute is forbidden to extend. This is the rule, as we understand it, upon which the Supreme Court acted in the *State Freight Tax Cases*, 15 Wall., 232; *Supervisors v. Stanley*, 105 U. S., 305, 313; *Virginia Coupon Cases*, 114 U. S., 269, and other cases that could be cited.

But we are not to be understood as conceding that any such rule of construction as that just stated is necessary to be invoked. It is not by any means necessary that section 103 should be read with or as part of section 102. The last-mentioned section stands alone and makes a complete provision by its own terms, and it is in no manner dependent upon section 103; and there is nothing in the terms of section 102 that renders it liable to constitutional condemnation, whatever may be thought of section 103. The statute must not be condemned as unconstitutional if by any reasonable construction of its terms it can be maintained as constitutional and valid. This is an undoubted rule of construction.

It has also been seriously contended in argument that the act of 1857, now embodied in the Revised Statutes, was an attempt on the part of Congress to delegate its power and jurisdiction, or the power and jurisdiction of the several Houses thereof, incident and belonging to it as a legislative body, to punish for contempts, to the courts, and therefore the statute is void. But to this we can not accede. The statute has never been understood, either by Congress itself or by the courts, as having any such purpose as that of an attempt to delegate the power of the Houses of Congress to commit for contempt of their authority. This is fully shown by the

case of Irwin, who was, for refusing to testify, committed by order of the House of Representatives, in 1875, and who, unsuccessfully, attempted to be relieved on habeas corpus. And so the case of Kilbourn, which occurred in 1876, where the witness was committed to prison by the order of the House of Representatives for refusing obedience to a subpoena duces tecum, and to testify, in regard to a matter referred to a committee for investigation, and for which imprisonment an action was brought. In that case, which underwent great consideration by the Supreme Court, it was never suggested or intimated that Congress held, or had attempted, to divest itself of, and relegated to the courts, the power to punish for contempts, in cases to which the power of each House properly extends, by the passage of the act of 1857. That Congress could not divest itself, or either House thereof, of that essential incidental power inherent in it may well be conceded. It is a constitutional incident of the body; but it can only be exercised in such cases as to which the power of the Houses in their separate capacities extends.

But the existence of such inherent power in the Houses of Congress did not preclude the passage of the act of 1857, in the exercise of the ordinary legislative power of the two Houses of Congress, prescribing additional pains and penalties to those already existing by virtue of the inherent powers of the Houses of Congress, as legislative bodies, nor did Congress express its meaning in any doubtful terms. By the very terms of the original act of 1857 it was declared that the recusant witness should, in addition to the pains and penalties then existing, be liable to indictment as and for a misdemeanor in any court of the United States having jurisdiction thereof, etc. In the Revised Statutes the terms "in addition to the pains and penalties then existing," have been omitted; but this omission can certainly not operate to make the statute import a sense that it never was intended to have, nor, consistently with the Constitution, could have. It is only by showing that the statute, as it stands in the statute book, is void, that the objection to it is available as a defense to the indictment; and the effort to show it void has utterly failed.

(2) We come now to the question, whether the matter of inquiry directed by the resolutions of the 17th of May, 1894, was within the power of the Senate to execute, by requiring witnesses to testify. And in considering this question we must confess there is great difficulty in clearly and distinctly marking the boundaries within which either House of Congress may act with coercive power to compel the disclosure of facts, deemed important to it, and the rights of the citizen to exemption from inquiry into his private affairs. The question was most elaborately considered in the case of *Kilbourn v. Thompson* (103 U. S., 168); but that case was presented in somewhat different aspect from the present.

It must, however, be considered as established by that case, that while, within certain limits and for certain purposes, either House of Congress may, where the examination of witnesses and the production of papers are necessary to the performance of its legal and constitutional functions, fine and imprison a contumacious witness, yet the Constitution invests neither House with any general power to punish for contempt. In that case it was also held that the question whether either House of Congress, acting in the case of a witness refusing to testify, had proceeded within the limits and scope of its constitutional authority, is a judicial question, and one not to be concluded by the judgment of the body itself. In other words, that the House taking action in such case, is a body of limited and restricted powers, and whenever powers are exercised in excess or beyond the limits of those constitutionally possessed by the House, its action can afford protection to no one acting under its unauthorized order or command. In the *Kilbourn* case, the resolution of the House of Representatives, under which Kilbourn was summoned and examined as a witness, directed the committee to examine into the history and character of what was called "the real estate pool of the District of Columbia;" and the preamble recited, as the grounds of the investigation, that Jay Cooke & Co., who were debtors of the United States, and whose affairs were then in litigation in a bankrupt court, had an interest in the pool or were creditors of it. The subject-matter of the investigation, therefore, was of judicial cognizance, and not legislative, and this was shown on the face of the resolution; and it was held that there existed no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently there was no authority in the House to compel a witness to testify on the subject. It followed that the order of the House, declaring Kilbourn guilty of a contempt of its authority, and ordering his imprisonment, was void, and afforded no protection to the Sergeant-at-Arms in an action against him for false imprisonment. It was emphatically declared by the court "that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possess the general power of making inquiry into the private affairs of the citizen."

In the case now before us the subject-matter referred to the committee for inves-

tigation was altogether different in its nature, and involved questions and consequences wholly unlike the subject-matter referred to the committee in Kilbourn's case. It was a matter immediately and most seriously affecting the Senate itself, and the great legislative trust confided to its members by the people, or the States of the Union. The dignity of the body and the integrity and purity of some of its members were openly and seriously questioned, and that, too, in a manner well calculated to destroy public confidence in, and bring odium and reproach upon, that important branch of our national legislature. The charges or imputations referred to in the resolutions, the truth of which was made the subject of inquiry, not only affected pending legislation with distrust, but were of a nature, if found to be true, to subject members of the body to reprimand or expulsion, and other guilty parties to punishment, at the hands of the Senate. But nothing could be done until inquiry was made, and the facts brought to light. A preliminary investigation was therefore necessary. And for the purposes of the inquiry, no more formal proceedings were required than those adopted by the Senate. No technical formality was required; and no specific charges could, in justice and fairness, be formulated against any member of the Senate, or any other person, until the facts could be ascertained upon which to proceed; and it certainly can not be true that the Senate is powerless in such case to elicit the facts. What the ultimate action of the Senate should or may be, upon the facts when ascertained, is not the question for the court to determine, but simply whether the inquiry instituted forms a subject-matter properly and constitutionally within the cognizance and jurisdiction of the Senate. That the subject-matter was within its jurisdiction, we entertain no doubt. And having power and jurisdiction of the subject-matter of inquiry, the Senate by its committee had full and ample power to compel the attendance of the appellant as a witness, and to require him to answer any question pertinent to the matter of inquiry embraced by the resolutions. There is no pretense that the answers to the questions propounded would or could criminate the witness in any way, and it was his clear duty as a citizen to obey the law, and to answer the questions without respect to the persons to be affected. His refusal was at his peril, and he must abide the consequences prescribed by the statute.

It has been strongly insisted in argument that because the specific ulterior purpose of the investigation was not avowed or declared on the face of the resolutions, and thus made to appear, affirmatively and in terms, that the Senate by instituting the investigation intended the exercise of some of its acknowledged powers, such as the expulsion or censure of its members, the punishment of parties for attempting to corrupt members, or for conduct otherwise calculated to bring the body into scandal and contempt with the people, therefore there was no power to require disclosure of facts, though pertinent to the inquiry, authorized to be made. But to the correctness of this contention we can not consent. The subject-matter of inquiry being within the jurisdiction of the Senate, the court can not assume that the body intended the investigation as a mere idle, prying, inquisitive proceeding, without ultimate aim or object. We must assume that the object and design of the inquiry was intended for legitimate purposes, and not for the accomplishment of that which would be unlawful.

The resolutions of reference to the committee do not, in terms, require the committee to report their proceedings to the Senate. But that was necessarily a part of their duty; for it is an established principle "that when their acts and proceedings are agreed to they become the acts and proceedings of the House; it is consequently the duty of committees both to proceed under the authority given them and to report their proceedings to the House." (Cush. Parl. Law, sec. 1930.)

(3) The last question to be considered is whether the questions propounded to the appellant were pertinent to the subject-matter of inquiry before the committee. This question would seem to need but little to be said in regard to it. Each and all of the questions had reference to and sought to elicit the information whether the stockbrokers' firm, to which the appellant belonged, had bought or sold during the months of February, March, April, and May, 1894, sugar stocks for or in the interest, directly or indirectly, of any United States Senator, or were carrying such stocks for said Senators. If these questions had been answered in the negative, this fact thus proved would have gone far toward relieving Senators of the charge or imputation of using and abusing their position as Senators for the purpose of making selfish gain in the stock market. While, on the other hand, if the answers had been in the affirmative, the fact thus disclosed would have subjected the Senator or Senators involved, not only to the animadversion of the public, but to censure, if not expulsion from the body to which he or they belonged, by his or their fellow Senators. This was plainly within the scope of the inquiry, and was that to which the resolution referred when it directed the committee to inquire "whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." Whether the questions propounded by the committee or by the Senate were pertinent, is a judicial question

and is an essential element in the offense charged; but we are clearly of opinion that the questions set out in the indictment and which the appellant refused to answer were all pertinent to the inquiry given in charge to the committee.

Upon the whole, this court is of the opinion that the indictment is good and sufficient, and that the demurrer thereto was properly overruled by the court below; and that the demurrer in the similar case of the United States against John W. Macartney, also on appeal to this court, and submitted with and to be determined on the arguments in the case against Chapman, the present appellant, was also properly overruled by the court below; and that the judgments entered on the demurrers in both cases must be affirmed; and it is so ordered.

Judgments affirmed.

An indictment was also returned by the grand jury against Allen L. Seymour, a stockbroker of New York, for refusing to answer certain questions propounded by said special committee. As the indictment does not differ in any material respect from those against Messrs. Chapman and Macartney, it is not given, nor the demurrers thereto.

Indictments were also returned by the grand jury to the Supreme Court of the District of Columbia against the newspaper correspondents, Elisha J. Edwards and John S. Shriver, in substantially the same form as that returned against Chapman and Macartney, and which were based upon the refusal of said correspondents to disclose the names of persons from whom they had received the information upon which the publications in their respective journals were based. To these indictments, demurrers were interposed by A. J. Dittenhoefer, counsel for the indicted parties. Said demurrers were similar in each case, for which reason it is only necessary to insert one of said demurrers—that in the case of Edwards—which is as follows, viz:

*IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING
A CRIMINAL TERM.*

UNITED STATES OF AMERICA	}	Demurrer to indictment.
v.		
ELISHA J. EDWARDS.		

And now, at this day, that is to say, on the 24th day of November, 1894, comes the said Elisha J. Edwards, by A. J. Dittenhoefer, and having heard the indictment read, says that the United States of America ought not any further to impeach him, the said Elisha J. Edwards, touching or concerning the premises whereof he, the said Elisha J. Edwards, is, by this indictment accused, because he says that the said indictment and the matters therein contained in manner and form as the same are stated and set forth, are not sufficient in law to compel him, the said Elisha J. Edwards, to answer thereto, and that no process upon the said indictment ought by the law of the land to be made against him, the said Elisha J. Edwards, and that he is not bound by the law of the land to answer the same, and this is he is ready to verify.

And the said Elisha J. Edwards further saith that the United States of America ought not further to impeach or molest him, the said Elisha J. Edwards, on account of the said premises because he saith that the said indictment is insufficient in law to put him, the said Elisha J. Edwards, to answer to the said indictment, and that by the law of the land no process ought to be made upon the said indictment against him, the said Elisha J. Edwards, for the following, among other reasons:

(1) That the Senate, mentioned in the indictment, had no power, authority, or jurisdiction over the matter and subject referred to in the resolution alleged in the indictment to have been passed and adopted on the 17th day of May, 1894.

(2) That the power of the said Senate did not extend to an inquiry into the subject-matter of the said resolution.

(3) That the said resolution fails to show that the said committee was empowered to try any Senator for disorderly conduct or failure to attend its sessions, or to make an investigation with a view to the expulsion of a Senator, or to punish a Senator for contempt, or otherwise, or that said committee was authorized to make any investigation in connection with any contested election, or the trial of any impeachment, or in reference to the qualification of any of its members, or that said inquiry was for the purpose of assisting the Senate in any legislative or judicial action.

(4) That neither the Senate nor said committee have jurisdiction to require the said Elisha J. Edwards to answer the said questions propounded to him.

(5) That the said Elisha J. Edwards did not refuse to answer any question pertinent to the subject-matter under inquiry by the said Senate or the said committee.

(6) That the questions propounded to the said Elisha J. Edwards, referred to in the indictment, were not pertinent to the question under inquiry before the said committee or the said Senate.

(7) That no prosecution can be instituted or maintained under the statute under which the indictment against the said Elisha J. Edwards has been found until the Senate has passed on the said question and determined that it is pertinent to the said inquiry.

(8) That to answer the said questions propounded to the said Elisha J. Edwards and disclose the facts required by the said questions would tend to criminate said Edwards and render him liable to a criminal prosecution, fine, and penalty, and he would not, if compelled to answer, have absolute immunity from prosecution or punishment by reason of the said statute or any statute of the United States.

(9) That to answer the said questions propounded to the said Elisha J. Edwards and disclose the facts required by the said questions would tend to render him guilty of contempt of the said Senate and of its members, and liable to prosecution, fine, and penalty, and he would not have absolute immunity from prosecution and punishment by reason of the said statute or any other statute of the United States.

(10) That to answer the said questions propounded to the said Elisha J. Edwards and to disclose the facts which said questions required him to answer would tend to degrade him in compelling him to disclose private, confidential, and privileged communications.

(11) That the said questions propounded to the said Elisha J. Edwards called for a disclosure of private, confidential, and privileged communications made to him as a journalist.

(12) That if the said Elisha J. Edwards wilfully refused to answer questions pertinent to the question under inquiry before the said committee or the said Senate, and there was jurisdiction to require an answer thereto, the power to punish him for refusing to make answer can not be delegated by the said Senate to this court or to any jury in and for the District of Columbia.

(13) That if the said Elisha J. Edwards wilfully refused to answer questions pertinent to the question under inquiry before the said committee or the said Senate, and there was jurisdiction to require an answer thereto, the right to determine whether the said Elisha J. Edwards committed an offense can not be delegated to this court or to any jury in and for the District of Columbia.

(14) That the laws under which the indictment against the said Elisha J. Edwards was found are unconstitutional in that they violate the provision of the Constitution of the United States securing the people in their persons, houses, papers, and effects against unreasonable searches and seizures, and declaring that no person shall be compelled to be a witness against himself.

(15) That the laws under which the said Senate and said committee sought to compel the said Elisha J. Edwards to testify and answer the questions propounded to him are unconstitutional in that they violate the said provisions of the Constitution of the United States.

(16) That this court has no jurisdiction of and over the alleged transaction or offense claimed to have been committed by the said Elisha J. Edwards and set forth in the said indictment.

(17) That in instituting and making the inquiries referred to in the said resolution the necessary and essential judicial forms of procedure have not been followed or carried out.

(18) That the questions propounded to the said Elisha J. Edwards were improper, inadmissible, and not pertinent to the question under inquiry.

(19) That section 859 of the Revised Statutes providing that testimony given by a witness shall not be used as evidence in any criminal prosecution, is not broad enough to give the accused absolute immunity from prosecution.

(20) That no specific question was propounded to the said Elisha J. Edwards that he declined to answer.

(21) That the questions which were propounded were answered and the answers accepted as sufficient by the said committee.

(22) That the questions set forth in the said indictment to which it is alleged the said Elisha J. Edwards refused to make answer, did not call for a specific fact.

Wherefore, and for want of a sufficient indictment in this behalf and the said objections above referred to, appearing on the face of the indictment, the said Elisha J. Edwards prays the judgment of the court here, and that he may be dismissed and discharged of the said premises in the said indictment specified.

ELISHA J. EDWARDS.

By A. J. DITTENHOEFER,

His Attorney.

A. J. DITTENHOEFER,

Attorney for Elisha J. Edwards, Defendant.

Indictments were also returned by the same grand jury against Henry O. Havemeyer, who was President of the American Sugar Refining Company, and John E. Searles, Secretary and Treasurer of said company, for refusing to answer certain questions relating to the amounts of money contributed by the said American Sugar Refining Company to campaign committees in sundry states in the year 1892 and other years. These indictments are formulated largely upon the same theory as those in the cases of Chapman and Macartney, except that they contain averments tending to show the methods of conducting campaigns in the several states, especially the campaigns, State and National for the year 1892, and that in said year, in addition to elections for electors for President and Vice-President, elections were also held in said states for members of the House of Representatives of the Fifty-third Congress, and in certain of said states for members of state legislatures, which would have the power to elect Senators to the Fifty-third Congress.

The following demurrers were interposed by Nathaniel Wilson, counsel for said defendants:

*IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING
A CRIMINAL TERM.*

THE UNITED STATES	}	No. 19991.
v.		
HENRY O. HAVEMEYER.		

Henry O. Havemeyer, the defendant named in the indictment filed in the above entitled case, appearing by his attorney, Nathaniel Wilson, only for the purposes of this demurrer, says: That the said indictment is bad in substance.

NOTE.—In support of the foregoing demurrer the defendant intends to argue that the indictment is bad, because:

(1) It does not appear by the indictment that the request with which it alleges that the defendant did not comply, was made by the committee, or by its authority. On the contrary it appears that such request was made by the said William V. Allen so far as, and only so far as, he was concerned.

(2) It appears by the indictment that the request referred to was that the defendant would obtain information which he did not then have, not that he would give testimony which he could give at the time, or produce papers which were then within his control.

(3) It is not charged in the indictment that the defendant had any such control of the books of the American Sugar Refining Company or authority in respect of its papers as would enable him to comply with such request.

The defendant, as an officer of that company, in the absence of special authority had no such control of the company's books and papers, or authority in respect thereof.

(4) It does not appear by the indictment that such request and the data which the defendant was requested to produce were pertinent to the subject under inquiry by the committee. On the contrary, it appears that such request and data were not pertinent to the subject under inquiry by the committee.

(5) It does not appear by the indictment that such request and data came within any jurisdiction or authority which the Senate had conferred or had attempted to confer upon the committee. On the contrary, it appears that such request and data did not come within any jurisdiction or authority which the Senate had conferred or had attempted to confer upon the committee.

(6) It does not appear by the indictment that such request and data came within any jurisdiction or authority of the Senate. On the contrary, it appears that such request and data did not come within any jurisdiction or authority of the Senate.

(7) The indictment does not show that such request and data were pertinent to or could be pertinent to the ascertainment whether the said amendments to the said tariff bill had been made by the American Sugar Refining Company, or whether that company had been permitted to dictate such amendments. On the contrary, the indictment shows that such request and data were not and could not be pertinent to the ascertainment that the said amendments had been made by the American Sugar Refining Company, or that that company had been permitted to dictate the said amendments.

(8) The indictment fails to show how in any way contributions by the American Sugar Refining Company, for State or local purposes, could aid in the election to the Senate either of the Democratic party, or of anyone else. No sums of money contributed by the American Sugar Refining Company to campaign committees of the Democratic party, for State or local purposes, could or did aid in the election of that party, or of anyone else, to the Senate.

(9) The indictment does not show that there was reported to the Senate a refusal by the defendant to answer any question pertinent to the question under inquiry by the committee, or that the President of the Senate certified any such fact to the district attorney for the District of Columbia.

(10) The Senate is only possessed under the Constitution of such powers as have been conferred upon it directly or indirectly, or by necessary implication. No power has been conferred upon it either directly or through a committee which permits it or its committee to require the defendant to answer said questions.

Section 102 of the Revised Statutes is in violation of constitutional rights and protections in that it undertakes to compel a witness to answer questions which might criminate, or disgrace, or render him infamous.

(11) Section 103 of the Revised Statutes would not protect the defendant, nor would he be protected by section 859 of the Revised Statutes, if he were proceeded against in a State jurisdiction upon the claim that contributions for State or local purposes had been improperly made by him, or with his knowledge or privity.

(12) Power to punish for refusal to answer questions propounded by a committee of the Senate cannot be delegated to a court, nor can the determination of the facts relative to such refusal be committed to a jury.

(13) The law under which this indictment was found is unconstitutional, in that it is in violation of the fourth and fifth amendments of the Constitution.

(14) To charge an offense under section 102 of the Revised Statutes the indictment must, among other things, show that the Senate had jurisdiction of the subject of the inquiry, and that it proposed to take authorized action in respect thereof; that it had conferred upon its committee authority to propound the inquiry by resolution showing that it proposed to take such action; that the inquiry was pertinent to such action; that the inquiry was put by the committee; that an answer could not criminate or tend to disgrace or render infamous the witness; that a refusal was reported to the Senate by the committee, and that it was certified by the President of the Senate to the district attorney for the District of Columbia.

The indictment is bad in that it fails to comply with the foregoing requirements.

NATHL. WILSON,
Attorney for Henry O. Havemeyer.

*IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING
A CRIMINAL TERM.*

THE UNITED STATES }
 v. } No. 19990.
JOHN E. SEARLES. }

John E. Searles, the defendant named in the indictment filed in the above-entitled case, appearing by his attorney, Nathaniel Wilson, only for the purposes of this demurrer, says that the said indictment is bad in substance.

NOTE.—In support of the foregoing demurrer the defendant intends to argue that the indictment is bad, because—

(1) It does not appear by the indictment that the questions which it alleges the defendant declined to answer were asked by the committee, or by its authority. On the contrary, it appears that said questions were asked by the said William V. Allen.

(2) It is not charged in the indictment that the defendant had the knowledge or information necessary to enable him then and there to answer said questions, or that he had the right or authority to obtain from the books of the American Sugar Refining Company the information necessary to enable him to answer said questions or to communicate said information to any other person.

(3) It does not appear by the indictment that said questions which the defendant was requested to answer were pertinent to the subject under inquiry by the committee. On the contrary, it appears that said questions were not pertinent to the subject under inquiry by the committee.

(4) It does not appear by the indictment that said questions came within any jurisdiction or authority which the Senate had conferred or had attempted to confer upon the committee. On the contrary, it appears that said questions did not come within any jurisdiction or authority which the Senate had conferred or had attempted to confer upon the committee.

(5) It does not appear by the indictment that said questions came within any jurisdiction or authority of the Senate. On the contrary it appears that said questions did not come within any jurisdiction or authority of the Senate.

(6) The indictment does not show that said questions were pertinent to or could be pertinent to the ascertainment whether the said amendments to the said tariff bill had been made by the American Sugar Refining Company, or whether that company had been permitted to dictate such amendments. On the contrary, the indictment shows that said questions were not and could not be pertinent to the ascertainment that the said amendments had been made by the American Sugar Refining Company, or that that company had been permitted to dictate the said amendments.

(7) The indictment fails to show how in any way contributions by the American Sugar Refining Company for State or local purposes could aid in the election to the Senate either of the Democratic party, or members of said party, or of anyone else. No sums of money contributed by the American Sugar Refining Company to campaign committees of the Democratic party for State or local purposes could or did aid in the election of that party or of anyone else to the Senate.

(8) The resolution appointing the committee does not show that the Senate proposed to take action upon any subject pertinent to which were the questions set out in the indictment.

(9) The indictment does not show that there was reported to the Senate a refusal by the defendant to answer any question pertinent to the question under inquiry by the committee, or that the President of the Senate certified any such fact to the district attorney for the District of Columbia.

(10) The Senate is only possessed under the Constitution of such powers as have been conferred upon it directly or indirectly or by necessary implication. No power has been conferred upon it, either directly or through a committee, which permits it or its committee to require the defendant to answer said questions.

Section 102 of the Revised Statutes is in violation of constitutional rights and protections in that it undertakes to compel a witness to answer questions which might criminate or disgrace or render him infamous.

(11) Section 103 of the Revised Statutes would not protect the defendant nor would he be protected, section 859 of the Revised Statutes, if he were proceeded against in a State jurisdiction upon the claim that contributions for State or local purposes had been improperly made by him, or with his knowledge or privity.

(12) Power to punish for refusal to answer questions propounded by a committee of the Senate can not be delegated to a court, nor can the determination of the facts relative to such refusal be committed to a jury.

(13) The law under which this indictment is unconstitutional in that it is in violation of the fourth and fifth amendments of the Constitution.

(14) To charge an offense under section 102 of the Revised Statutes the indictment must, among other things, show that the Senate had jurisdiction of the subject of the inquiry, and that it proposed to take authorized action in respect thereof; that it had conferred upon its committee authority to propound the inquiry by resolution showing that it proposed to take such action; that the inquiry was pertinent to such action; that the inquiry was put by the committee; that an answer could not criminate or tend to disgrace or render infamous the witness; that a refusal was reported to the Senate by the committee, and that it was certified by the President of the Senate to the district attorney for the District of Columbia.

The indictment is bad in that it fails to comply with the foregoing requirements.

NATH'L WILSON,
Attorney for John E. Searles.

Mr. John E. Parsons, of counsel for the defendants, Henry O. Havemeyer and John E. Searles, submitted the following brief:

*IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, HOLDING
A CRIMINAL TERM.*

THE UNITED STATES v. HENRY O. HAVEMEYER.

THE UNITED STATES v. JOHN E. SEARLES.

The indictments charge that the defendants, before the Senate investigating committee, declined to obtain from the books of the American Sugar Refining Company data upon which to give information of, and to answer about political contributions by, the company for State and local purposes.

It is claimed that the committee were authorized to institute the inquiry under that portion of the Senate resolutions which instructed it to inquire—

“Whether any contributions had been made by the sugar trust or any person connected therewith to any political party for campaign or election purposes, or to secure or defeat legislation.”

The indictments charge that the particular inquiries were made by Senator Allen, a member of the committee, the question put to Mr. Havemeyer saying "so far as he was concerned." Although the questions as addressed by Senator Allen were asked the defendants by Senator Gray, the chairman, they were put as questions submitted by Senator Allen. There is nothing to show, nor is it charged, that the committee, by action on its part, adopted Senator Allen's inquiries, or, as a committee, took action upon the subject. All that appears is that no such inquiries having been addressed to the defendants by the committee, or by the chairman as expressing the voice of the committee, Senator Allen himself individually asked the information, and that as a courtesy to him Senator Gray submitted the inquiries, not as purporting to come from the committee, but as expressing the individual wish of Senator Allen.

Of the five members of the committee, two, Senator Gray, chairman, and Senator Lindsay, submitted to the Senate a report, in which they say:

"The undersigned members of the committee, being unable to agree with the majority in the report made by them to the Senate in the case of witnesses Henry O. Havemeyer and John E. Searles, deem it proper to state the ground of their dissent.

"The resolution of the Senate under which the committee has been prosecuting this investigation directs it to inquire among other things 'whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes or to secure or defeat legislation.'

"The undersigned do not believe that in our system of government unlimited power is deposited by the people anywhere, but on the other hand that limitation of power was conspicuously kept in view by the framers of that government. They do not feel at liberty, therefore, to impute to the Senate a purpose to pursue ends clearly beyond the scope of its power. Admitting that an inquiry as to whether certain persons have made contribution to any political party to secure or defeat Federal legislation is within the competence of the Senate to make, they deny that it is within such competence to direct an inquiry as to who has contributed to the campaign fund of any political party without reference to the purpose for which the contribution was made.

"The undersigned, therefore, in obedience to the principle of the well-established rule that where a construction is possible which brings a law within the enacting power of the legislature such construction shall obtain, have felt compelled to construe the resolution so as to make the instruction of the Senate to the committee one commanding it to inquire whether any contributions have been made by the sugar trust, or any persons connected therewith, to any political party for campaign or election purposes to secure or defeat Federal legislation. As will appear from the evidence of Mr. Havemeyer and Mr. Searles submitted to the Senate, the question was in substance thus put to them and answered in the negative.

"It will be observed from the extracts from the testimony submitted by the majority of the committee that the witnesses, Havemeyer and Searles, answered freely and fully all questions as to whether or not contribution had been made by the sugar trust to the national campaign fund of any party, and that the charge of contumacy rests solely upon questions put to them as to the amounts and particulars of contributions which they had testified had been made by the trust for local and State purposes. Therefore, the question presented by this report is whether or not the Senate of the United States directed this committee, or had power to direct this committee, to inquire as to what contributions a particular individual or corporation may have made to campaign funds for the conduct of elections strictly State or local in the years 1892 and 1893.

"It is the opinion of the undersigned that the resolutions under which this committee is acting will not admit of the interpretation necessary to support the report of the majority of the committee, and that the said witnesses have not refused to answer any question that was pertinent to the inquiry with which the committee was or could have been properly charged."

The indictments do not show compliance with section 104, United States Revised Statutes, which reads:

"Whenever a witness summoned as mentioned in section one hundred and two fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

There have already been heard before the court cases against brokers who declined to answer questions tending to show speculations by Senators in stock of the company. His honor, Judge Cole, in deciding those cases, held that the inquiries were pertinent to a subject with which the Senate could deal.

The Constitution, article 1, section 2, subdivision 2, itself provides:

"Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member."

There have already been argued, as I understand, cases against newspaper correspondents who declined to be examined upon statements made by them, alleging improper conduct on the part of Federal officials and Members of Congress.

I also understand that there have been argued before the court of appeals of the District the cases against the brokers, and that in these cases will be considered many technical objections which are common to the indictments in all the cases. I assume that the learned court may withhold the decision in these cases of points which are to be passed upon by the appellate tribunal pending its decision.

The questions which I propose particularly to discuss are not presented in the case against the brokers, and, so far as I know, have not been heard by the court.

I maintain:

1. That the legislation relied on (sections 102 and 103 U. S. Rev. Stat.), so far as it is claimed to be the foundation of proceedings against these defendants, is in violation of the Constitution.

(a) It attempts to compel a citizen to criminate himself.

(b) It undertakes to put a citizen twice in jeopardy for the same offense.

(c) It substitutes another tribunal for vindicating the dignity of the Senate, a function which, so far as it has been conferred, the Constitution has conferred upon the Senate alone; and

(d) The indictments try to make pertinent to action by the Senate the subject of elections which the Constitution has entrusted exclusively to the States.

2. That the subject of the inquiries addressed to Messrs. Havemeyer and Searles is:

(a) Outside of any authority conferred upon the investigating committee.

(b) Outside of any authority of the Senate.

(c) Not pertinent to the question under inquiry by the committee.

(d) Nor pertinent to the tariff bill nor to amendments which were being considered, or could be considered by the Senate.

3. That if jurisdiction in the Senate, authority in the committee, pertinency of the inquiry, and the constitutionality of the legislation be assumed, no contumacy by Messrs. Havemeyer and Searles appeared.

The gist of the questions to them was that from the books of the company they should obtain data upon which to furnish the desired information.

(a) They were not called upon—in fact, they had no power—to furnish information from the books of the company. They were the company's books, not theirs.

(b) Section 102, United States Revised Statutes, is intended to compel a witness to give information which he has, not to obtain information which he does not at the time possess.

These various positions are amplified in the demurrers.

I take for granted that as these are criminal prosecutions the indictments must, beyond reasonable dispute, show the necessary jurisdiction of the Senate and authority of the committee, must show compliance with all requirements essential to the completed offense, and must allege such facts as show the pertinency of the inquiry to a subject with which the Senate has the right to deal.

If, in any of these respects, the indictments are faulty, a fortiori if they show affirmatively that the subject was outside of Federal jurisdiction, the demurrers must be sustained.

FIRST.

The legislation relied on (sections 102 and 103, U. S. Rev. Stat.), so far as it is claimed to be the foundation of proceedings against these defendants, is in violation of the Constitution.

The purpose of the resolutions was to ascertain whether the American Sugar Refining Company had "used money to secure or defeat legislation."

The claim of the Government is that, if this was so, the defendants could be compelled to disclose their knowledge and show their privity, thus establishing that they had been guilty of an infamous crime.

1. The Constitution protects a citizen against this flagrant violation of natural and established rights.

Section 103 is entitled: "No privilege to refuse to answer criminating questions."

It reads: "No witness is privileged to refuse to testify to any fact or to produce any paper respecting which he shall be examined by either House of Congress or by any committee of either House upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous."

Section 859 United States Revised Statutes, provides:

"No testimony given by a witness before either House or before any committee of either House of Congress shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege."

Putting the several sections together, the result is that Congress has attempted to pass a law by which a witness may be compelled to criminate himself, to disgrace and otherwise render himself infamous, and that, so far as concerns official papers or records, no attempt is made to protect him against their use as evidence against him in any criminal proceeding.

The protection which section 859 affords is limited to Federal jurisdiction. Congress can not deprive the States of their right to prosecute for crime or to use any evidence which is available.

This attempt is in direct violation of principles which are as old as the common law of England.

It is not within any authority which has been conferred upon the United States. The "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." (Article X of amendments.)

It is in direct violation of the intention and language of Article V of the amendments:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury; * * * nor shall any person * * * be compelled in any criminal case to be a witness against himself."

NOTE.—It was said on the argument by the district attorney that section 103 could be disregarded; that section 102 was independent, and that treated independently it did not violate the Constitution in this respect. He claimed that the *Brimson* case (*Interstate Commerce Commission v. Brimson*, 154 U. S., 447) established this, the interstate commerce law and the legislation in question being similar in this respect. I understand that there is no such similarity. But of the power of Congress to pass the interstate commerce act there can be no question. Nor can there be any question of the right of Congress to refer it to the circuit courts of the United States to assist in carrying out the act. No order of the court could be made without giving to the witness the right to avail of every personal privilege which was available to him, as, for example, that his answer would criminate himself. Nor would the order be made without an opportunity to the witness to be heard. The case holds that the Commission itself could not be invested with authority to punish for contempt. So far as it applies to the present case, if it holds anything it holds that Congress can not make it a crime for a witness to decline to answer before a commission.

2. The legislation is unconstitutional under the provision of Article V of the amendments, which provides:

"Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

Under this the Supreme Court has held that a citizen can not be punished twice for the same misdemeanor. (*Ex parte Lange*, 18 Wall., 165.)

If the defendants can be convicted under the indictments they are put in peril. If they can not be convicted the demurrers must be sustained.

So, again, if a case is made showing contempt in a matter which is within the authority of the Senate to punish, the Senate can itself put the defendants in jeopardy.

This subject was before the New York court of appeals in *People ex rel. v. Keeler* (99 N. Y., 463). The court sustained provisions of the New York penal code making a misdemeanor the refusal of a witness to answer, for the reason that the New York statutes protect a witness against a twofold proceeding. The Federal statutes do not.

NOTE.—Upon the argument the learned district attorney contended that cases apply holding that where a crime—assault, for example—has been committed under such circumstances as to constitute contempt of a court or of a legislative body, the offender may be punished for the contempt and may also be punished for the crime; and that they establish that under the Constitution the Senate may punish for the contempt and the offender be also exposed to indictment for it.

The slightest consideration will show that the cases are wholly different. Assault is a crime, wherever committed. If committed in the presence of a court, it constitutes contempt of court as well. But it is the contempt of the Senate, and that only, which this legislation constitutes to be the crime. There is no possibility of subdividing the offense. If there were no contempt there would be no offense. In the cases suggested by the district attorney, whether contempt of the court or of the legislative body existed or not, a crime was complete.

3. The right of the Senate to punish for contempt, and of Congress to make the offense indictable, if it exists at all, comes from the Constitution. Neither act of Congress nor action of the Senate can deprive it and the people of this constitutional right. So far as this difficulty is sought to be remedied by the requirement of the certificate of the President of the Senate, that certificate is essential to the completed offense. The indictments fail to show that there was such a certificate.

What is required is not a mere formal certificate. The purpose of the certificate

is to commit the Senate to the action of the committee. The President is the mouth-piece of the Senate. He does not speak for himself, he speaks for it. In requiring the certificate, the legislation in question, therefore, assumes and requires that there shall have been a report by the committee, and that the Senate itself shall have taken action upon it, that action being certified by its President. A committee of the Senate can take no action the effect of which extends outside of the Senate. Its duty is to report to the Senate. It is the Senate which, upon that report, takes the required action. If the legislation in question can be sustained without action by the Senate, to be certified by its President, this anomaly will result: A grand jury may hold that *prima facie* there has been contempt of the Senate in a case of which the Senate officially never heard.

4. The legislation in question attempts to substitute another remedy for the refusal of a witness to testify, which, under the Constitution, can be punished by the Senate alone.

The power in the Senate to punish for contempt in the limited cases in which that power can be exercised comes by implication from the authority conferred by the Constitution upon the Senate to expel members, etc.

If it be granted that Congress might declare to be a misdemeanor a refusal to answer a question put by the Senate, as constituting a mode of enforcing the authority of the Senate, it is the dignity of the Senate itself, and that alone, which must be assailed. Non constat that when Messrs. Havemeyer and Searles were confronted with the august dignity and power of the Senate, and had had the right to be heard, they might have deemed it prudent to give the desired information; non constat that the Senate might have declined to take the action which it is asserted was taken by its committee. Such power as the Senate has is personal to itself and cannot be delegated.

Cases holding that the refusal to answer questions put by a committee of a State legislature may constitute a misdemeanor have no application for the reason that the legislative bodies of the United States have only such authority as the Constitution confers. Legislative bodies of States have all the authority which the State constitutions do not withhold.

Nor is the objection met by *Interstate Commerce Commission v. Brimson*. In that case the Supreme Court (the Chief Justice, Judges Brewer and Jackson dissenting) held that to obtain information relating to the exercise by Congress of the power conferred upon it by the Constitution to regulate commerce, the circuit courts of the United States might exercise jurisdiction to punish a witness for a refusal to testify.

The contempt in that case is not contempt of either House. It is contempt of a tribunal created by law.

5. The subject of inquiry, so far as the Senate could deal with it at all, was limited to contributions to secure or defeat legislation. The point of inquiry was whether the sugar company had violated the purity of elections by the use of money under a corrupt bargain that thereby it should secure beneficial legislation. This subject is one with which, under the Constitution, States alone can deal. This subject is treated in connection with the subsequent point.

SECOND.

The subject of the inquiries addressed to Messrs. Havemeyer and Searles is—

- (a) Outside of any authority conferred upon the investigating committee.
- (b) Outside of any authority of the Senate.
- (c) Not pertinent to any question under inquiry by the committee.
- (d) Not pertinent to the tariff bill nor to the amendments which were being considered, or action which could be considered by the Senate.

Unless the inquiries were pertinent to a subject which was within the jurisdiction of the Senate, and within the authority which the Senate had conferred upon its committee, there was no obligation on the part of the defendants to answer.

A citizen is entitled to be protected against inquiry into his private affairs. This right was thus expressed in *Kilbourn v. Thompson* (103 U. S., 168):

“Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.”

The charge of the indictments is that in 1892 in the State of New York and in other States elections were held for the purpose of choosing electors for President or Vice-President, of choosing Representatives in the Fifty-third Congress, and of choosing members of legislatures which would have the power to elect Senators in that Congress; that such elections were attended with great expense; that this expense was contributed to campaign committees; that among such campaign committees was

a national campaign committee, and that contributions to such campaign committees were pertinent to the inquiry whether the company had been permitted to dictate the Senate amendments to the tariff bill in consideration of large sums of money contributed to campaign committees of the Democratic party to aid in the election to the Senate of members of that party.

If by so roundabout and indirect a process contributions for purely State and local purposes can be brought within the Federal domain, the indictments are fatally defective in that the particular questions were not limited to an inquiry either

(a) About contributions to national committees; or

(b) Contributions toward the expense of campaigns at which were to be elected members of legislatures; or

(c) Contributions toward the expense of an election of a legislature by which was, or was to be, elected any Senator to the Fifty-third Congress.

The inquiries were not limited to any such case, whether specified or not.

It must be remembered that each indictment asserts that the defendants were willing to answer about national campaign contributions. The refusal, so far as there was a refusal, was to answer about contributions to aid the election of State and local officers. (Searles indictment as printed, p. 17; Havemeyer indictment as printed, p. 18.)

1. This was not pertinent to any actual or permissible subject of inquiry.

It was information upon this subject which Senator Allen sought. His questions were general.

If Messrs. Havemeyer and Searles were justified in refusing to answer the inquiries as they were addressed to them, they were not guilty of contempt. It is immaterial that those inquiries embraced subjects about which they could be compelled to testify. If they were to be put in contempt it could only be by asking questions which were limited to proper subjects of inquiry. The defendants were not compelled to subdivide the inquiry. They were not called upon to draw the line between that which they might be required to answer and that which was privileged. That obligation devolved upon those from whom the inquiry proceeded.

2. It ought to go without saying that neither the committee nor the Senate had the right to interrogate Messrs. Havemeyer and Searles about political contributions to aid the election of officers of municipal corporations, contributions to campaigns for the election of judges, of governors, or other State officers, or any campaigns which related to purely State and local purposes.

3. Any refusal which the indictments charge was limited by the defendants themselves to answer questions about contributions for State and local purposes. It was such contributions that Senator Allen wished to know about. It was information about such contributions that the indictments charge that Messrs. Havemeyer and Searles declined to furnish. They had the right to decline.

The inquiry was a single one. It is manifest that as it was put it asked information which neither the Senate nor the committee could compel the defendants to give.

4. But it is submitted that everything which was or which could be embraced in the inquiry was beyond the jurisdiction or authority of the Senate or of its committee. The Constitution provides, article 1, section 4:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the place of choosing Senators."

Article 2, section 2:

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator, or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

An offense against an election in a State is an offense with which the State and the State alone can deal.

The gist of the charge is that by contributions for election purposes a bargain was made to secure to the company favorable action by the Democratic Senators in the Fifty-third Congress. Any such bargain would violate the purity of the election in the State in which the election was held. It would violate laws which it is to be assumed the States have passed, or which they have the right to pass, to protect the purity of elections. For a violation of such laws an offender may be prosecuted in the particular State.

Grant this and the Constitution itself protects him against accountability or inquiry elsewhere. The jurisdiction of the State is exclusive.

The only subject pertinent to which were, according to the indictments, the inquiries addressed to Messrs. Havemeyer and Searles, was expressed in that part of the resolutions appointing the committee which instructed them to inquire whether "any contribution had been made by the sugar trust or persons connected with it to

any political party for campaign or election purposes, or to secure or defeat legislation."

The Senate could take no action upon the subject. It was not entitled to the information in order that if the fact were so it could punish the company by adverse tariff action. The Senate is not a criminal court. Nor in considering tariff changes can it or should it discriminate according to its estimate of the moral character of the persons to be affected. The rain falls alike upon the just and the unjust.

It is to be remembered that Mr. Havemeyer was examined about a bargain and denied it absolutely.

5. The resolutions refer to an article in the newspaper called *The Press*. In that article the statement is made that the sugar company made a large contribution of money to the Democratic National campaign committee upon the distinct pledge that there would be no legislation at the hands of the Democracy which should be antagonistic or unfriendly to the company.

So far as concerns the sugar company, it was this charge that the committee was to investigate. This of itself excluded an inquiry about contributions for State or local purposes. It was a contribution to the national committee that the Senate committee were to inquire about. They did do so. Messrs. Havemeyer and Searles answered and answered fully. This was followed by Senator Allen's wish to know about contributions for State and local purposes. The Senate, granting its power, had not conferred any such authority upon the committee.

6. The indictments fail to show how a bargain could be made by which, in consideration of political contributions, there should be a pledge that Democratic Senators should vote one way or the other upon the tariff bill.

The duty of Senators was to vote according to their convictions. Grant that they were likely to vote with their party, and the question suggests itself, what concern is it of the Senate that Democratic Senators shall vote with Democrats? They were elected to do so. The indictments do not charge improper influence upon Senators. They proceed upon the claim that either party, if it can secure the necessary appointment of a committee, may gratify its curiosity about political contributions to aid the success of the other or of its own party. No information upon the subject should or could influence the action of the Senate upon the legislative matter under consideration. No information upon the subject could lead to legislation about the mode in which elections shall be conducted. The Constitution, as has appeared, commits that subject exclusively to the States.

Grant everything which the indictments assert, waive every other objection, and there is left the point whether, for the gratification of curiosity or to aid in political warfare, a citizen may be compelled to give information about his private affairs.

That he is under no such obligation is universally held.

The following and the cases cited in the opinion of the courts furnish the law relied upon to support the propositions which have been advanced. It is not necessary to refer to them in detail.

Anderson v. Dunn, 6 Wheat, 204; *Kilbourn v. Thompson*, 103 U. S., 168; *In re Pacific Railway Company*, 32 Fed. Rep., 241; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447; *People ex rel. McDonald v. Keeler*, 99 N. Y., 463.

JNO. E. PARSONS, *For Defendants*.

Mr. George F. Edmunds, also of counsel for said defendants, submitted the following brief:

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

December term, 1894. December 22, 1894.

UNITED STATES v. HENRY O. HAVEMEYER, No. 19991,

AND

UNITED STATES v. JOHN E. SEARLES, No. 19990.

POINTS SUBMITTED IN SUPPORT OF THE DEMURRERS IN THESE CASES BY MR. EDMUNDS, OF COUNSEL FOR THE RESPONDENTS.

I. The Senate of the United States exists and possesses all its capacities in virtue of the Constitution alone.

II. No law can either increase or diminish its powers.

III. If, then, the Senate had the constitutional right and power to punish for the alleged contempt described in the indictments in these cases, Congress had no power to take away that right and power and bestow it upon the courts of law.

IV. The act of January 24, 1857, recognized in terms the foregoing proposition by declaring that the offenders "shall, in addition to the pains and penalties now existing," be subject to prosecution and punishment for the same offenses in the courts of law.

V. It is obvious, therefore, that if the respondents had been guilty of contempt of the Senate this statute distinctly and intentionally exposed and subjected them to a double jeopardy, a double punishment for the same identical offense against the same sovereign power, i. e., the United States.

The Revised Statutes omitted the quoted words, either as redundant, or with intent to give the courts the exclusive jurisdiction of that class of contempt, and take it away from the Senate.

VI. It is almost useless to state the truism of philosophy and law that the contempts (if any existed), such as are alleged here, are offenses against the sovereignty of the Government, and have, and can have, no other quality whatever.

VII. The fifth article of the amendments to the Constitution expressly declares that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb."

VIII. The act under which these indictments are found does, in both letter and spirit, subject all persons charged with the enumerated species of contempt to double jeopardy for the same offense, unless an act of Congress can withdraw a constitutional power of the Senate and transfer it to a court.

IX. If the Senate had the power to make the investigation described in its resolutions, and if the questions which the witnesses declined to answer were legitimately connected therewith, and the witnesses' answers would not tend to criminate themselves, there can be no dispute that the Senate had the constitutional power and duty of punishment for the offense.

X. But if the Senate had no power to make the investigation, or if the questions which the witnesses declined to answer were not legitimately connected therewith, or would incriminate the witnesses, Congress had no power to make such refusal an offense.

(a) It can not be made an offense against the United States to refuse to aid the Senate in the exertion of an unconstitutional power.

(b) Nor can it be made an offense to refuse to answer questions that the Senate, in the course of a lawful investigation, had no right to put.

XI. The act of 1857 was, and the sections of the Revised Statutes are, one indivisible declaration on one single and indivisible subject—as much so as if all its words had been contained in one section only. The compulsion of the act and its declaration of crime embrace in one mass, and without discrimination, testimony that the Constitution declares the witnesses shall not be compelled to give, with testimony that in a proper case they ought to be compelled to give. In such a case the judiciary power can not supply exceptions or discriminations that the legislature evidently did not intend to make, and, in fact, expressly negatived by the second section—which section is manifestly unconstitutional. If the crimes act, for illustration, did not contain the limitations of its punishment to crimes committed in the District of Columbia, in forts, etc., but only declared generally that the crime of murder, for instance, should be punished, and the man were indicted for a murder committed in Baltimore, though the event occurred in Fort McHenry, would any one contend that the indictment should be upheld, or, if the converse were stated, i. e., that the offense was committed in Fort McHenry?

XII. Neither of the indictments allege that the committee ever reported the matter to the Senate, but they proceed solely upon the assumption that as a matter of law the judiciary branch of the Government acquired an indefeasible jurisdiction of the supposed offense, *eo instanti*, and that no action of the Senate holding the questions to be improper could affect the case; and also that no action of the President of the Senate or of the district attorney, as described in the statute, was necessary to the validity of the proceedings of the grand jury.

(a) It is submitted, with entire confidence, that Congress has the power, and sole power, to determine by law when, and under what circumstances prosecutions for statutory offenses shall be instituted and carried on, except where the Constitution otherwise provides.

(b) That the plain meaning of the words of the third section of the statute is that the prosecution in the courts shall be begun only when the President of the Senate, and acting under its direction, shall send the papers to the prosecuting officer to be laid before the grand jury.

(c) If this be so, then it follows that the court could exercise no jurisdiction without it, and that the indictments must allege the facts that show the jurisdiction.

(d) So, on the face of the indictments, the whole proceedings here appear to be a gratuitous and bald invasion by the grand jury of the proceedings of the Senate in a matter which the statute had provided might be acted upon by the grand jury when the Senate should appeal to it.

XIII. Neither indictment alleged that the refusals to answer were wrongful or unlawful, but each describes the offense nakedly, as a willful refusal, without color and without imputation.

This, it is submitted, is not sufficient. The allegations of the indictments may be perfectly true, and the respondents perfectly innocent, for, assuming everything else to be lawful and regular, the witnesses might have refused to answer for the reason that their answering would tend to criminate themselves. In such a predicament a jury would be bound to say guilty, i. e., that the indictment was proved, while the judge would be bound either to charge the jury to return a verdict of not guilty, though every allegation of the indictment had been proved. It is believed that there is neither principle or precedent upholding such an indictment.

THE NATURE AND SCOPE OF THE SENATE RESOLUTIONS.

The preamble declares that newspapers had printed statements "in substance and to the effect that bribes had been offered to certain members of the said Senate" for the purpose of influencing their action on the tariff bill. The preamble also states that a newspaper had charged that the sugar schedule had been made up "in consideration of large sums of money paid for campaign purposes to the Democratic party." The innuendo charges that the meaning of that was that the sugar schedule "had been made up by the said American Sugar Refining Company, and that the said corporation had been permitted to dictate the said amendment * * * in consideration of large sums of money contributed by the said corporation to the campaign committees of the said Democratic party, to aid in the election of the candidates of the said party for President and Vice-President, and to aid in the election to the said Senate and said House of Representatives of the candidates of the said Democratic party and in fulfillment of the pledges given; that is to say, by promises made to the agents or representatives of the said corporation at the time of the contribution of the sums aforesaid, that if said Democratic party was successful in obtaining control of the said Senate and House of Representatives and in electing its candidates for President and Vice-President, no legislation injurious to the said corporation and its business should be enacted.

The resolution then directs the committee to investigate charges implicating Senators, "and to inquire further whether any contributions have been made by the said sugar trust, or any persons connected therewith, to any political party for campaign and political purposes or to secure or defeat legislation." The innuendo states the inquiry to be whether the said American Sugar Refining Company, or any person connected therewith, acting in its behalf or in its interest, has paid or given over to any person or committee of any political party or organization, for the purpose of aiding in the election of any such candidates of any such party or organization for President and Vice-President of the United States during the said Presidential campaign, and for the further purpose of aiding in the election to the said Senate and House of Representatives of the candidates of any such party or organization, and for the further purpose of securing the enactment of laws of the United States favorable to the interest of the said American Sugar Refining Company, and for the further purpose of preventing the enactment of laws of the said United States unfavorable to the interests of the said American Sugar Refining Company. That is the innuendo.

Upon this part of the subject it is submitted, in addition to the points in Mr. Parsons's brief:

(a) That the gravamen of the charge is that the sugar company had made contributions to the political campaign before the meeting of Congress, and that in consideration thereof the company, after the meeting of Congress, had been permitted to influence the shaping of the bill in fulfillment of pledges given, not by any Senator or other officer of the Government, but undescribed pledges by some undescribed person.

There is nothing in this allegation that touches or pretends to touch either the honor or dignity of the Senate or any of its members. And there is no hint in the innuendo or anywhere in the indictment of any intent on the part of the Senate to take any legislative step in respect to such subject, even if it had the power.

On the contrary, the resolutions distinctly require the committee to report on every other part of the inquiry except that touching political contributions—*expressio unius, exclusio alterius*. This discrimination was, every intelligent man will conclude, not an accident.

But it is broadly denied that Congress has any power to prohibit the payment of money by citizens in aid of the lawful expenses of any political campaign, even if the purposes of such payment be to attain legislation that is favorable to the interest of the persons paying the money, for every citizen who pecuniarily aids a political campaign, if he be patriotic, expects that if his side prevails there will be legislation in favor of his interests and not against them.

It follows that the allegation is one in respect of which the Senate had no right to take any action or compel any citizen to state what contribution he had made in aid of any political party, with whatever expectation. The indictment, therefore, is bad in substance so far as it regards the alleged payment of money in aid of the previous campaign of the Democratic party.

(b) But the accusations against the respondents fall far short of the matter of inquiry into national elections. Both witnesses answered fully as to those. Their only alleged offense is (when we carefully examine the indictments) that they declined to inform the committee (if the committee put the question) how much they had contributed to a purely State campaign for State officers only. It may be suggested that the Senate may inquire into contributions in aid of the election of State legislatures because the legislatures elect Senators in Congress. Such a proposition includes a central supervision by Congress of the election of the legislatures of States, which possess the sole law-making power of the States for all purposes. No argument or illustration on such a proposition is suggested. It is left to stand naked and alone.

(c) The resolutions do not even propose to make a general inquiry into political contributions, but expressly confines the inquiry to the contributions of certain described citizens—not in connection with any suggested inducement to or by, or any understanding with, any Senator or Member of the House, or any officer of the Government. Even supposing for the moment that the Senate may lawfully inquire into political contributions in the country with a purpose of legislation, it is denied that it can select a particular citizen for the inquisition. Such a transaction strips itself of its pretended public legislative character, and becomes a naked and despotic invasion of private rights.

(d) The residue of the resolutions set out in the indictments relates to Senatorial speculations in sugar stocks pending the tariff bill, and suggests corrupt influences brought to bear upon Senators personally. These topics were within the power of the Senate to investigate by due course of procedure; but the indictments make no allegation of any refusal of the witnesses to answer any questions concerning them. The only charge was the refusal of the witnesses to state the amount of money that they or their company had contributed to the political State campaign of 1892.

(e) All the questions put to the witnesses fall distinctly within the decision of *Kilbourn v. Thompson*, as being based on a resolution of inquiry that, in this respect, the Senate had no right to make, as the case is set out in the indictments. The resolution, so far as regards political contributions, does not require any report to be made; but as it regards any corrupt action or corrupt influence in respect to any Senator, it does in terms require a report to be made. Any possible implication, therefore, that the contribution part of the inquiry was to be made with a view to legislation is absolutely repelled.

(f) All the points mentioned in the demurrers are insisted upon.

GEORGE F. EDMUNDS,
Of Counsel for Respondents.

Mr. A. J. Dittenhoefer, attorney for the defendants, John S. Shriver and Elisha J. Edwards, submitted the following brief:

*SUPREME COURT FOR THE DISTRICT OF COLUMBIA, HOLDING A
CRIMINAL TERM.*

UNITED STATES v. JOHN S. SHRIVER.

UNITED STATES v. ELISHA J. EDWARDS.

DEFENDANTS' BRIEF IN SUPPORT OF THE DEMURRERS.

The indictments were found under sections 102, 103, and 104 of the Revised Statutes, and charged that the defendants refused to answer certain questions propounded to them by a special committee of the Senate under the following resolution, passed on the 17th day of May, 1894:

"Whereas it has been stated in the *Sun*, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and,

"Whereas it has also been stated in a signed article in the *Press*, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party; therefore,

"*Resolved*, That a committee of five Senators be appointed to investigate these charges and to inquire further whether any contributions have been made by the sugar

trust, or any person connected therewith, to any political party for campaign or election purposes, or to secure or defeat legislation, and whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate, and with power to send for persons and papers, and to administer oaths.

“Resolved further, That said committee be authorized to investigate and report upon any charge or charges which may be filed before it alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation.”

As the legal questions involved in the cases are similar, it is unnecessary to submit a separate brief for each defendant. We will, therefore, first discuss the points particularly applicable to the Shriver indictment; next, such as are applicable to the Edwards indictment, and, finally, the points common to both indictments.

The defendant Snriver, it is alleged in the indictment found against him, was the author of the following article which appeared in the New York Mail and Express on the 19th day of May, 1894:

“Just here it may be well to give a little incident in the proceedings of the last few weeks in which the sugar trust has taken such a prominent part. The headquarters of the officials of the trust have been in a certain room in the Arlington Hotel. The night the celebrated demand was made on the Democratic Senators that the trust must be cared for or the Wilson bill would be killed, there happened to be in the next room to the sugar trust parlor a wire manufacturer from a place not far from New York. He had come to Washington to try and induce the Senate Finance Committee to change its schedule in which he was interested, and, worn out with his vain attempts to secure an audience with the Democratic ‘triumvirate’ in charge of the bill, he had retired to his room.

“He had hardly sought his bed before the loud talking in the sugar trust parlor attracted his attention. He tried to sleep, but slumber was impossible. The voices next door grew louder and more violent as the night proceeded. He distinctly distinguished the voices of several Democratic Senators whom he knew, and also those of the sugar trust magnates. It was nearly morning when the conference broke up, and the wire manufacturer was allowed at last to fall asleep. He did not, however, remain in bed long after the sun was up, because what he had heard seemed to him too good news.

“Bright and early he was down in the lobby of the hotel and telling his friends, among them a couple of Congressmen, that he knew the Wilson bill would never pass. He made no secret of how he got his information and even told the names of the Senators who had been in the room next to him nearly all night. The wire manufacturer did not linger about Washington, but returned to his home fully satisfied that there was no use for his remaining any longer to see the Democratic Finance Committee.”

Referring to said article, Senator Gray, as chairman, put the following question to the defendant attending as a witness before his committee: “I first ask you, do you of your own knowledge know the facts therein stated?” to which the defendant answered, “No.” “What is your authority for that statement?” to which he answered, “A Congressman—Member of the House.” “Did he tell you this?” “Yes, that he was told by this wire manufacturer.” “What is the Congressman’s name?” to which he replied, “I am requested by the Congressman not to reveal it.”

Thereupon the examination of the defendant was continued to the following day, when he was interrogated as follows: “When you left the committee room last night, you had been asked who your authority was for the statement which you made in your letter to the Mail and Express, published on Saturday last, in regard to a conversation between certain members of the sugar trust and certain Senators, which conversation was overheard in a room in the Arlington Hotel. You said that you could not answer it then, and you asked until this morning to consider whether you would answer the question. What have you to say now?”

The indictment does not give the answer to this last question, but merely the conclusion that the defendant declined to answer, without even alleging that he said that he would not answer. There is, therefore, nothing from which the court can determine for itself that the conclusion set forth in the indictment is justified.

Sections 102, 103, and 104 of the Revised Statutes are as follows:

“SEC. 102. Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars, nor less than one hundred dollars, and imprisonment in a common jail for not less than one month, nor more than twelve months.

"SEC. 103. No witness is privileged to refuse to testify to any fact, or to produce any paper respecting which he shall be examined by either House of Congress or by any committee of either House, upon the ground that his testimony to such fact, or his production of such paper, may tend to disgrace him or otherwise render him infamous.

"SEC. 104. Whenever a witness, summoned as mentioned in section one hundred and two, fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

As the defendants were required by the said statute to answer only such questions as were pertinent to the inquiry authorized by the resolutions, it becomes necessary to define the jurisdiction of the committee. What, then, was its authority? It had the power to investigate—

First. The charge that the resolutions alleged appeared in the Sun: "That bribes have been offered to certain Senators to induce them to vote against the pending tariff bill," but nothing else in the Sun article;

Second. The charge that is alleged to have appeared in the article in the Press: That the sugar schedule was made up as it then stood in the proposed amendment in consideration of the payment of money to the Democratic party for campaign purposes, but nothing else in the Press article;

Third. Whether—not referring to the Sun or Press articles—any contributions were made by the sugar trust or any person connected therewith to any political party for campaign or election purposes;

Fourth. Whether any contributions were made by the said trust or persons connected therewith to secure or defeat legislation;

Fifth. Whether any Senator had been speculating in sugar stocks pending the consideration of the tariff bill;

Sixth. As to any other charge or charges which might thereafter be filed before the committee alleging that any Senator was corruptly or improperly influenced in the consideration of said bill, or that any attempt was made to so influence legislation.

POINT I.

THE COMMITTEE HAD NO JURISDICTION TO MAKE ANY INQUIRY WHATEVER CONCERNING THE DEFENDANT'S ARTICLE IN THE MAIL AND EXPRESS.

It is not mentioned in the resolutions, and was not referred to the committee for investigation. Indeed, it did not appear in that newspaper until two days after their passage. While the committee had no other jurisdiction than such as was conferred by the resolutions, it was here attempting, without any authority, to inquire about an article written in the Mail and Express not referred to it for investigation. Nor was the inquiry concerning said article in aid of any of the matters specifically embraced in the resolutions. It was concerning a separate and distinct matter not referred to the committee. Had it been sought for the purpose of establishing any of the matters concerning which the committee had jurisdiction, a different case would be presented, making it necessary for the court to determine whether the question Shriver declined to answer was pertinent, but Shriver was not bound to answer any question whatever relating to the article in the Mail and Express.

II.

ASSUMING THAT THE COMMITTEE WAS ENGAGED IN THE INVESTIGATION OF A MATTER EMBRACED IN THE RESOLUTIONS, THE QUESTION THE DEFENDANT SHRIVER IS CHARGED WITH REFUSING TO ANSWER, WAS NEVERTHELESS NOT PERTINENT TO THE MATTER UNDER INQUIRY.

Shriver was asked the name of the Congressman who gave him the information. It appears from the indictment that the Congressman received the information from a wire manufacturer. Therefore, the Congressman's testimony would have been mere hearsay, but the wire manufacturer himself, as appears from the indictment, could not have testified to anything relating to any of the matters referred to the committee, for it is alleged that he merely heard loud talking without an intimation as to what was its tenor or the subject-matter.

If the wire manufacturer's testimony would not be pertinent, clearly the inquiry as to the name of the Congressman to whom the wire manufacturer communicated the said incident was not pertinent.

The extract embodied in the question does not refer to any of the matters set forth in the resolutions under which the committee were authorized to act, and if the wire manufacturer himself were produced and swore to what was contained in said extract, his evidence would have no relevancy to any of those matters.

The said extract does not allege—

That bribes were offered to certain Senators to induce them to vote against the pending tariff bill; or that the sugar schedule had been made up as it stood in the Jones amendment in consideration of large sums of money paid for campaign purposes to the Democratic party; or that contributions had been made by the sugar trust or any person connected therewith to any political party for campaign or election purposes; or that contributions had been made by the sugar trust or any person connected therewith to secure or defeat legislation; or that any Senator had been speculating in sugar stocks during the consideration of the tariff bill before the Senate; or that the action of any Senator had been corruptly or improperly influenced in the consideration of the tariff bill, or that any attempt had been made to influence legislation.

As to the investigation authorized by the last resolution, whether the action of any Senator had been corruptly or improperly influenced in the consideration of the said bill (tariff bill), or whether any attempt had been made to so influence legislation, it was a condition precedent that charges should be filed before the committee, and as the indictment fails to allege that such charges were filed, it is manifest that the committee had no authority to examine Shriver or any one else under said resolution.

It thus appears that the article has no relevancy to the subjects referred to the committee for investigation, and it follows that it was not pertinent to the inquiry to require the disclosure of the name of the Congressman who told the defendant that he received the information on which the said article was based from a Pittsburgh wire manufacturer. The defendant, therefore, in refusing to give the name of the Congressman, committed no offense.

III.

THE QUESTION WAS NOT SUFFICIENTLY SPECIFIC TO REQUIRE THE DEFENDANT SHRIVER TO ANSWER.

Briggs v. Matsell, 2 Abb., P. R., 156.

In that case an application to punish a witness for contempt for refusing to answer questions put to him by a committee of the legislature of New York was denied, the court saying:

"The judge, before allowing the attachment (for contempt), is to be satisfied that the question put to the witness was a proper one—pertinent to the matter in issue, and one which the witness should be required to answer. The rule is the same when the witness is examined in a court of justice. A witness is not required to answer an immaterial question, nor one which tends to convict him of crime—and before it can be decided that the witness must answer, the court should know what question was proposed to be answered. Notwithstanding the general refusal of the witness, I am of the opinion that the committee should have proposed specific questions to the witness pertinent to the matter pending before them. * * * But until some question is put to the witness, and he refuses to answer a specified question, I do not think I have any jurisdiction."

"What have you to say now?" was the question put to defendant Shriver. It was too vague and indefinite. It would even puzzle a lawyer to understand it on the spot. No wonder that Shriver was perplexed and unable to make any answer at all.

IV.

THE QUESTION THE DEFENDANT EDWARDS IS CHARGED WITH REFUSING TO ANSWER WAS LIKEWISE NOT PERTINENT TO THE MATTER UNDER INQUIRY.

The indictment against the defendant Edwards charges that he was asked the following question: "Who informed you that upon the Sunday before the bill, as first reported, was sent to the Senate, there was a striking illustration of the absolute domination of the sugar trust over the Democratic members of the Finance Committee; that that was an all-day and half-night session and upon the Sabbath day; that in one room were the Democratic members of the Finance Committee, and in one wing of the Capitol were the representatives of the sugar trust—Havemeyer and Terrill and Meyer and Ben LeFevre and others; that these men sat as the rulers of a political convention sit, in a place apart, and yet within instant communication of those who are to act; that there were runnings back and forth between the

finance rooms and the quarters occupied by the trust all day; that everything had been arranged up to the point of satisfying the Louisiana Senators; that even the trust realized it was necessary for the Democratic party to placate these Louisiana men, or else there would surely be two votes against the bill; that it was a question of compromise, each side giving a little and taking a little.

"That at one time it seemed as if the whole negotiation must go to pieces; that never was there more desperate battle between conflicting interests in the committee rooms of the Capitol; that, at last, late that evening, Senator Caffrey drafted a schedule, Mr. Havemeyer looking over his shoulder, and the other members of the sugar trust watching the Senator with eyes that fairly glittered, as one Senator who saw that spectacle afterwards expressed it; that it was a crucial point; that when Senator Caffrey had finished the sugar trust read his draft, reluctantly accepted it, it was taken to the room of the Finance Committee and there accepted;" that he answered, the "same informant;" and that thereupon he was asked "who was he," to which he replied, "I decline to answer under the advice of counsel."

It will be noticed that this indictment, unlike the Shriver indictment, sets forth the answer and not a mere conclusion.

If the matter embraced in the question was not pertinent to the inquiry the committee was authorized to make, surely it was not entitled to obtain from the defendant the name of the party who gave him the information. Manifestly it contains nothing that touches in the remotest degree any of the subjects referred to the committee for investigation.

Edwards's article—unlike Shriver's—is mentioned in the resolutions, but the investigation concerning it is expressly limited to such parts as allege or charge that the sugar schedule was made up in consideration of the payment of money to the Democratic party for campaign purposes. Now, as the extract embodied in the question contains no such charge, allegation, or reference, it was not "pertinent" to the inquiry the committee was empowered to make. The committee had no general jurisdiction to fish for evidence relating to Mr. Edwards's writings.

Even if the committee was not limited to the investigation of any charge or allegation in said article that the sugar schedule was made up in consideration of the payment of money to the Democratic party for campaign purposes, the question was, nevertheless, not pertinent, for the reason that the extract embodied in the question did not refer to any of the other matters concerning which the committee was authorized to make an investigation.

It does not charge that bribes were offered to Senators to induce them to vote against the tariff bill, or that contributions had been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes, or that contributions had been made by the sugar trust, or any person connected therewith, to secure or defeat legislation, or that any Senator had been speculating in sugar trusts during the consideration of the tariff bill before the Senate, or that the action of any Senator had been corruptly or improperly influenced in the consideration of the tariff bill, or that any attempt had been made to influence legislation. As it is entirely devoid of any allusion to these matters, which are the only ones concerning which the committee was specially authorized to make inquiry, it is incontrovertibly clear that the question was not pertinent. For that reason the defendant Edwards was justified in declining to answer. Under the last resolution, it was a condition precedent to the authority of the committee to investigate that charges be filed, and as the indictment fails to allege that any charges were filed, it follows that the committee had no authority to examine Edwards or anyone else under said last resolution.

V.

THE RESOLUTIONS CONFERRED NO JURISDICTION ON THE COMMITTEE, FOR THE REASON THAT THEY DO NOT SHOW THAT THE INVESTIGATION WAS REQUIRED IN AID OF EITHER THE JUDICIAL OR LEGISLATIVE FUNCTIONS OF THE SENATE.

This proposition has been fully discussed by counsel in the other cases in which demurrers have been filed, and as it is now awaiting a decision by the court of appeals in the Chapman case, an elaborate argument seems unnecessary, we shall, therefore, simply direct the court's attention to a decision of the supreme court of New York holding that there is no presumption, that an investigation ordered by a legislative committee is for legislative or judicial purposes, but that the resolution must show that such is the fact. (*People v. Webb*, 23 St. Rep., 324.)

In that case, a committee was appointed by the legislature of New York to investigate certain charges made in reference to the building of the State capitol, and the question arose as to the power to punish a witness as for a contempt for refusing to answer certain questions. The objection was made that there was no jurisdiction in the committee, for the reason that the resolution did not plainly disclose the purpose for which the investigation was ordered, and that the statement, in general

terms, that it was "for the purpose of remedial legislation" was not sufficient. The court, in sustaining the objection, says (at pp. 331, 332, 334, 335):

"Assuming, therefore, as we must under the authorities, that the legislature has no general judicial powers, and that it can confer none upon its committees; and that its power to punish contumacious witnesses is confined strictly to examinations for legislative purposes, we are forced in this case to the consideration of the question: Was the investigation in which the special committee of the house was engaged, when the relator refused to answer and produce papers for legislative purposes, or to promote beneficial legislation, or was it inquisitorial, in the nature of a judicial investigation? * * * As we have seen, a legislative committee may summon and examine witnesses in legislative proceedings, or to promote remedial legislation. But when they seek to enforce obedience to their orders by proceedings for contempt, they must be acting strictly within the limits of their delegated authority; both committee and witness are subject to the provisions of the statute. In this case the recitals in preambles, purporting to give reasons for the adoption of the resolution of investigation, do not suggest any new legislation. The chief object seems to be the gratification of a very natural and, perhaps, very laudable curiosity on the part of the press and the public, to know what had been done with the \$100,000 profit on the contract. * * * That case (*Kilbourn v. Thompson*) differs from this, however, in the fact that in this case, at the conclusion of the resolution appointing this committee, the following assertion is added, 'and for the purpose of remedial legislation.'

"If, by this declaration of the purpose of the investigation, the court could see any field open for legislation growing out of the investigation, it would clearly be the duty of the court to give full effect to that declaration.

"But such declaration alone, unsupported by any fact, could not confer jurisdiction.

"If it could, then, by incorporating such a declaration in such a resolution, a legislative committee could invade private rights, and thus inquisitorially proceed to investigate all the transactions of an individual or a community, under the delusive pretense of remedial legislation, and thus nullify the provisions of the statute above referred to, limiting the power of the legislature to punish for a contempt.

"The rule is elementary that the mere assertion of jurisdiction does not confer it upon a tribunal of special and limited authority.

"If I am right in the conclusion at which I have arrived in this case, then the question involved is one of jurisdiction of the committee and the House, and that question may be reviewed on habeas corpus, and the right of the relator may be determined on this application. * * *

The opinion concludes as follows: "I am of the opinion that the assembly had no jurisdiction to compel the relator to answer the question and furnish the telegrams demanded, and that his committal for contempt on refusing to comply with the requirements of the committee was without jurisdiction and void, and that he must, therefore, be discharged."

That decision was followed in *People v. Van Tassel* (17 N. Y. Supp., 938), and in the same case on appeal reported in 64 Hun, 444.

VI.

THE INDICTMENTS ARE BAD IN THAT THEY FAIL TO ALLEGE FACTS SHOWING A WRONGFUL INTENT ON THE PART OF THE DEFENDANTS IN REFUSING TO ANSWER.

The statute under which the indictments were found enacts that every person summoned as a witness, who willfully refuses to answer any question pertinent to the question under inquiry shall be deemed guilty of a misdemeanor. It is thus apparent that to constitute a crime the refusal must be willful, and the indictments so charge.

What is meant by the word "willful" in a criminal statute was determined in *Felton v. United States* (96 U. S., 699), where the court says:

"Doing or omitting to do a thing knowingly and willfully implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it. The word 'willfully,' says Chief Justice Shaw, 'in the ordinary sense in which it is used in statutes, means not merely 'voluntary,' but with a bad purpose' (20 Pick. (Mass.), 220). 'It is frequently understood,' says Bishop, 'as signifying an evil intent without justifiable excuse'" (Crim. Law, vol. 1, section 428).

A wrongful intent must then accompany the refusal to answer, and where such an intent is an ingredient of an offense it is not sufficient merely to follow the language of the statute, but the facts must be alleged to enable the court on demurrer to determine for itself whether or not the act was committed with such an intent.

In *United States v. Carl* (105 U. S., 612, 613), the court says: "In an indictment upon a statute it is not sufficient to set forth the offense in the words of the statute,

unless those words of themselves fully, directly, and expressly without any uncertainty or ambiguity set forth all the elements necessary to constitute the offense intended to be punished; and the fact that the statute in question, read in the light of the common law and of other statutes on the like matter, enables the court to infer the intent of the legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent."

In *United States v. Britton* (107 U. S., 655), the court defining the word willful, says:

"They have no settled technical meaning like the word 'embezzle,' as used in the statutes, or the words 'steal, take, and carry away,' as used at common law. They do not, therefore, of themselves fully and clearly set forth every element of the offense charged. It would not be sufficient simply to aver that the defendant willfully misapplied the funds of the association. This is well settled by the authorities we have already cited. There must be averments to show how the application was made, and that it was an unlawful one. These averments the pleader has in this count attempted to make by charging that the defendant paid out the funds of the association in the purchase of its own stock, but this is not necessarily an unlawful use of the funds of the association."

In *Cutter v. The State* (36 N. J. Law, 135), Beasley, chief justice, says: "On the part of the State it is argued that this statute is explicit in its terms and makes the mere taking of an illegal fee a criminal act without regard to the intent of the recipient. Such, undoubtedly, is the literal force of the language; but then, on the same principle the officer would be guilty if he took by mistake or by inadvertence more than the sum coming to him. * * *

"Manifestly, therefore, the terms of this statute are subject to certain practical limitations. This is the case with most statutes couched in comprehensive terms, and especially with those which modify or otherwise regulate common-law offenses. In such instances the old and the new law are to be construed together; and the former will not be considered to be abolished, except so far as the design to produce such effect appears to be clear. In morals it is an evil mind which makes the offense, and this, as a general rule, has been at the root of criminal law. The consequence is that it is not to be intended that this principle is discarded merely on account of the generality of statutory language. It is highly reasonable to presume that the lawmakers did not intend to disgrace or to punish a person who should do an act under the belief that it was lawful to do it. And it is this presumption that fully justifies the statement of Mr. Bishop 'that a statute will not generally make an act criminal, however broad may be its language, unless the offender's intent concurred with his act'" (Crim. Law, 80).

It follows that if a defendant has a lawful excuse for not answering, no offense is committed. Now, as appears from the report of the said committee (Report No. 457, p. 49), the defendant Edwards placed his refusal to answer on the ground that it might tend to criminate him. Had that been set forth in the indictment it would have appeared on its face that there was no wrongful intent, for the refusal would have been justified and not "willful." Should it be held that the indictment is sufficient, it will be necessary for the defendants to plead and submit to a trial only for the purpose of being acquitted on their showing that their refusal to answer was justifiable, when, by stating the facts in the indictment, the court will be placed in a position to determine on demurrer that there is no ground for putting the defendants to that indignity and expense. These views are strengthened by the consideration that the defendant is usually the sole and exclusive judge whether an answer will criminate him, and that in no case is it a question for the determination of the jury.

VII.

AS A WITNESS CAN NOT BE COMPELLED TO ANSWER A QUESTION THAT MAY TEND TO INCRIMINATE HIM, THE INDICTMENT IS DEFECTIVE IN FAILING TO ALLEGE THAT THE REFUSAL TO ANSWER WAS NOT PLACED BY THE DEFENDANT ON THAT GROUND.

The offense created by the statute is a peculiar one. The refusal to answer a question is made a crime, but as questions can be asked which a witness can not, under the Constitution, be compelled to answer, to hold a defendant for a violation of this statute it must be shown, and therefore alleged in the indictment, that his refusal was not based on the ground that the answer would criminate him. It is conceded that it must be proved and alleged that the question was pertinent. For the same reason it must be alleged that the question is not incriminating, or rather that the defendant did not claim that it was. It is contended that this is a matter of defense, and therefore need not be alleged in the indictment. With equal force it might be claimed that it is a matter of defense to show that the question was not pertinent. The statute makes pertinency a necessary element of the question. For that reason it must be alleged that the question was pertinent, and as the Constitu-

tion, which must be read into the statute and is a part of it, makes the nonincriminating quality an element of the question, it must for the same reason be alleged that the question was not of an incriminating character.

If we assume, for the purpose of this discussion, that the defendants invoked this constitutional privilege, and that the pleader willfully omitted to allege that fact in the indictment, the soundness of this contention will be enforced. In such case they would be remediless, for they would be compelled to submit to the injury and expense of a trial only to be acquitted on the ground that they were excused from answering for the reason that they had declared that an answer would tend to criminate them.

VIII.

THE COMMUNICATIONS ON WHICH THE ARTICLES IN THE MAIL AND EXPRESS AND THE PHILADELPHIA PRESS WERE BASED WERE OF A PRIVILEGED CHARACTER, AND THE DEFENDANTS WERE NOT OBLIGED TO DISCLOSE THE NAMES OF THEIR INFORMANTS.

The public press has become an important agent to ferret out crime and dishonesty. If newspaper men can be compelled to reveal the sources of their information it would operate to destroy that field of usefulness, for there are few persons who would be willing to incur the odium and legal liability that might result from their disclosure as informers. For these, among other reasons, the privilege to remain silent as to who imparts information to a journalist should be allowed as a matter of public policy.

Referring to this subject Mr. Hegeman, in his work on privileged communications, says:

"The application of the rule of privileged communications to public journals and newspapers is not yet so well defined as it is in other branches of confidential disclosures founded upon public policy. The public press has developed into a mighty influence in all circles of modern civilizations. 'It has become the great educator and informer of mankind in social, civil, and political life. Its ear is everywhere open to every voice, often hearing the first intimation of violated law, and, in crime, often receiving the first confidential clew to the discovery of the guilty party; and it publishes to the world all its treasures of knowledge, and thus it has become a new and wondrous engine of power in every field of industry, education, religion, art, science, enterprise, and government. It is a new factor to be provided for in administering law in our courts of justice in the defense of liberty and human rights.' (Central L. Journal.) As evidence of a new and growing expansion of the principle of privilege applicable or sought to be made applicable to the editor of a newspaper, alike with the other professions, it will not be out of place to insert here an editor's plea in this behalf, inspired by the action of a Boston grand jury. The article is taken from the Central L. Journal, entitled 'Journalistic Secrets:'

"A Boston grand jury recently summoned before it an editor to state under oath where he had received certain information which was published in the columns of his journal. He declined to tell, under the plea that the case was privileged. Thereupon the court was asked to adjudge him guilty of contempt. The cause thus originated by the grand jury, being heard by the judge who had allowed to issue a rule to show cause why the editor should not be punished, an opinion followed releasing the defendant substantially upon the ground taken by him at the outset. The result will create no surprise, because there is as much honor and confidence involved in the communications made to editors of newspapers as between the lawyer and his client, the physician and his patient, or the clergyman and his confessing parishioner. Moral law forbids that communications confidentially disclosed in either of these relationships shall be published. The law of the State, which is founded on the moral, has taken the same high ground. Consider what a fetter would be put on all newspaper comments, if the source of information in every case were the subject of an inquiry on the part of the grand jury. No one would be safe in giving information to an editor for public use, though of the deepest importance to the community. He would make no use of facts within his possession, although such employment of them would be for the public good, as thereby some men may be brought into court and made an unwilling witness. The press is sufficiently hedged about by the ordinary law of libel, without the attempt of any grand jury to compel it to unearth to public gaze the secrets of the editorial room."

"The privilege claimed by the editor to be protected from the compulsory disclosure of the name of his informer in matters of criminal violations of law derives some consideration from its analogy to that existing between the prosecutor of the pleas and the witness who informs him on behalf of the State. The editor, in the wide scope of his vigilance over the good order and public morals of society, is recognized by the public as standing out in his newspaper as a public prosecutor, often exposing crime and arraigning at the bar of public opinion, and before the grand inquest of the country, persons implicated in the commission of crime before

ever the public legal prosecutor has taken action in the premises. The editor thus, as it were, fills the place of a tribune, and his newspaper is a species of tribunal, of great benefit and assistance in the public administration of justice, and as it is well settled in law that communications made to a prosecuting attorney relative to suspected criminals or to the operations of a detective police are privileged and are not to be divulged by the attorney without the consent of the person making the communication; so it is argued that the editor of a newspaper should be privileged from divulging the name, at least of the witness, who confidentially informed him of the public offense charged, without the consent of the informer. The analogy extends to the rule which prevails over secrets of state, where from motives of public policy, in England, in Crown prosecutions and in exchequer informations for fraud against the revenue laws, witnesses for the Crown will not be permitted to disclose either the name of the persons from whom they received information or the names of those to whom they gave information." (See sections 233, 234.)

When the doctrine of privileged communications was first established, the newspaper had not exhibited its great usefulness and power to aid in the administration of justice. It is only within the last quarter of a century that this power has been fully developed, requiring the broadening of the doctrine so as to include communications made to newspaper men. New principles have been established and old doctrines have been changed and enlarged to make them applicable to the new conditions created by the telegraph, telephone, and the steam engine, and the courts should not hesitate, for the reasons stated, to include the modern newspaper within the protection of privileged communications.

IX.

NEITHER A LEGISLATIVE BODY NOR THE COURTS HAVE THE POWER TO COMPEL A WITNESS TO DISCLOSE HIS PRIVATE AFFAIRS. WHO INFORMED THE DEFENDANTS OF THE MATTER STATED IN THE SAID ARTICLES IS A MATTER BELONGING PECULIARLY TO THEIR PRIVATE BUSINESS.

What the defendants say may be public property. Who told them is not. That is their secret, which can not be forced from their bosom.

The fourth and fifth amendments to the Constitution guarantees to a person protection against the forcible disclosure of his private affairs by judicial process.

In the *United States v. James*, reported in the *Albany Law Journal* of June 16, 1894, Judge Grosscup, reviewing the power of the court to punish a witness for refusing to answer certain questions before a grand jury, says:

"The question, then, comes back to this: What was the real purpose of the framers of the fifth amendment? Did they intend to guaranty immunity thereby against compulsory self-accusation of crime, so far as it might bring to the witness law-inflicted pains and penalties only? Or was it the purpose to make the secrets of memory, so far as they brought one's former acts within the definitions of crime, inviolate as against judicial probe or disclosure? * * * The case at bar, like those cited, inspires no wish in the court to protect the witnesses. The Interstate Commerce act is a law of the land, and the witnesses ask for the protection of the amendment under circumstances which indicate that, having violated it before, they have no intention to cease violating it now. It is the contest of people who disbelieve in the expediency of the law against the attempt to enforce it. The protection is asked not so much to keep inviolate the secrets of the human breast as to have immunity in further violating a law of the land. Judged by this specific instance, the fifth amendment, if construed broadly enough to afford the witnesses immunity against testifying, is an obstruction in the path of the administration of law. But the fifth amendment must not be judged by a single specific instance. It was placed in the organic law of the land for a purpose, and that purpose, when ascertained, must be enforced, however it may affect sporadic cases, or even the great body of cases, that may come before the court.

"What, then, was the intention of the makers of the fifth amendment? * * *

"The privilege which the framers of the amendment secured was silence against the accusation of the Federal Government—silence against the right of the Federal Government to seek out data for an accusation. This privilege of silence was, as they believed and as events then looked, in the interest of progress and personal happiness, as against the narrow views of adventitious power. Did they originate such privilege simply to safeguard themselves against the law-inflicted penalties and forfeitures? Did they take no thought of the pains of practical outlawry? The stated penalties and forfeitures of the law might be set aside; but was there no pain in disfavor and odium among neighbors, in excommunication from church or societies that might be governed by the prevailing views, in the private liabilities that the law might authorize, or in the unfathomable disgrace, not susceptible of formulation in language, which a known violation of law brings upon the offender? Then,

too, if the immunity was only against the law-inflicted pains and penalties, the Government could probe the secret of every conversation or society by extending compulsory pardon to one of its participants, and thus turn him into an involuntary informer. Did the framers contemplate that this privilege of silence was exchangeable always, at the will of the Government, for a remission of the participant's own penalties, upon a condition of disclosure, that would bring those to whom he had plighted his faith and loyalty within the grasp of the prosecutor?

"The suppression of crowns and principalities is unquestionably over, but the more frightful oppression of selfish, ruthless, and merciless majorities may yet constitute one of the chapters of future history. In my opinion, the privilege of silence against a criminal accusation guaranteed by the fifth amendment was meant to extend to all the consequences of disclosure."

In *re Pacific Railway Commission*, 32 Fed. Rep., 241, the court says:

"Congress can not compel the production of private books and papers of citizens for its inspection, except in the course of judicial proceedings, or in suits instituted for that purpose; and then only upon averments that its rights in some way are dependent upon evidence therein contained."

And again, on page 250, the court says: "In the pursuit of knowledge it" (the commission) "can not compel the production of private books and papers of citizens for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence those books and papers contain."

"Of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right all others would lose half their value."

In *Emery's case* (107 Mass., 172), the court says:

"No one will contend, of course, that the legislature is not limited in its powers by the provisions of the Constitution, equally with all other departments of the Government and the whole body of the Commonwealth, whether undertaken to be exercised in the ordinary form of laws enacted, or by those orders and requirements which are incidental to its functions and are adopted as a means of their performance. There is nothing in the terms of the article in question to except legislative bodies from its operation. The nature and purpose of the provisions are equally applicable to investigations conducted by the legislature itself, or by one of its branches, or by a committee of its own members, as when conducted before the courts, or by commissioners, or other tribunals established by law. Such tribunals can in no case disregard this rule of protection. The legislature cannot, by the most formal and solemn enactment of law authorize them to do it. If, then, the legislature can not, by the formal enactment of all its branches, subject a citizen to such compulsory disclosure, it is difficult to see on what ground of argument or inference from necessity, propriety, or the nature of constitutional republican government, an authority can be deduced for either branch of the legislature to do so by its mere order."

Mr. Justice Miller, the author of the opinion in the *Kilbourn case*, interpreting its meaning in a lecture subsequently delivered by him, said: "It was held that neither House had any right to organize an investigation into the private affairs of a citizen, and, except in a case in which the Constitution expressly conferred upon one body or the other powers which were in their nature judicial, and which required an examination of witnesses, they possessed no power to compel, by fine or imprisonment, or both, the attendance of such witnesses and answers to interrogatories which did not relate to some questions of which it had jurisdiction." (See *Lectures of Mr. Justice Miller*, delivered before the Law School of the District of Columbia, edited by J. C. Bancroft Davis.)

In *Boyd v. United States* (116 U. S., 635) Mr. Justice Bradley says:

"We have already noticed the intimate relation between the two amendments. They throw great light on each other. For the 'unreasonable searches and seizures' condemned in the fourth amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the fifth amendment; and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the fifth amendment, throws light on the question as to what is an unreasonable search and seizure within the meaning of the fourth amendment. And we have been unable to perceive that the seizure of a man's private books and papers, to be used in evidence against him, is substantially different from compelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms. We are also clearly of opinion that the proceedings instituted for the purpose of declaring the forfeiture of a

man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal."

In *Counselman v. Hitchcock* (142 U. S., 547), the court, in approving the opinion in *Boyd v. United States*, held that, in construing the provision of constitutional and statutory law which protects a citizen from being compelled to disclose to the world his private affairs, the rules of interpretation laid down in the case can not be too earnestly impressed upon the attention of the court, especially those provisions of law which require the courts in all cases to refrain from compelling the throwing open to the public gaze private homes and private affairs.

XI.

THE LAW UNDER WHICH THESE INDICTMENTS HAVE BEEN FOUND IS UNCONSTITUTIONAL IN THAT IT IS IN CONTRAVENTION OF THE FIFTH AMENDMENT.

Under that amendment no party can be compelled to be a witness against himself, and in *Counselman v. Hitchcock* (142 U. S., 547) it was held that the amendment authorizes a party to decline to give evidence in any criminal case, unless he is assured absolute immunity from punishment or molestation on account of the giving of said testimony.

The court, at page 564, says:

"It remains to consider whether section 860 of the Revised Statutes removes the protection of the constitutional privilege of Counselman. That section must be construed as declaring that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. It follows that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence or used against him or his property in any court of the United States in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.

"The constitutional provision distinctly declares that a person shall not 'be compelled in any criminal case to be a witness against himself;' and the protection of section 860 is not coextensive with the constitutional provision. Legislation can not detract from the privilege afforded by the Constitution. It would be quite another thing if the Constitution had provided that no person shall be compelled in any criminal case to be a witness against himself, unless it should be provided by statute that criminating evidence extracted from a witness against his will should not be used against him. But a mere act of Congress can not amend the Constitution, even if it should engraft thereon such a proviso."

And at page 585: "We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States. Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates. In this respect we give our assent rather to the doctrine of *Emery's case* in Massachusetts than to that of *People v. Kelly*, in New York; and we consider that the ruling of this court in *Boyd v. United States* supra supports the view we take. Section 860, moreover, affords no protection against that use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party."

It was attempted by section 859 of the Revised Statutes which provides that any evidence that may be given by a witness under section 102 shall not be used against him to remove the taint of unconstitutionality, but the *Counselman* case holds it to be insufficient. That view was followed in *People ex rel. Taylor v. Forbes* (143 N. Y., 219). There the relator having been adjudged guilty of contempt for refusing to

answer certain questions before a grand jury was discharged by the court of appeals, the court saying:

"After the Constitution of the United States had been adopted, it was deemed important to add to it several amendments, and one of them (article 5) provides, among other things, that no person 'shall be compelled, in any criminal case, to be a witness against himself.' It was also incorporated into the Constitution of the State (article 1, section 6), and more recently into the Code of Civil and Criminal Procedure (Code Civil Pro., sec. 37; Code Crim. Pro., sec. 10). These constitutional and statutory provisions have long been regarded as safeguards of civil liberty, quite as sacred and important as the privileges of the writ of habeas corpus or any of the other fundamental guaranties for the protection of personal rights.

"When a proper case arises they should be applied in a broad and liberal spirit in order to secure to the citizen that immunity from every species of self-accusation implied in the brief but comprehensive language in which they are expressed. The security which they afford to all citizens against the zeal of the public prosecutor, or public clamor for the punishment of crime, should not be impaired by any narrow or technical views in their application to such a state of facts as appears from the record before us. The right of a witness to claim the benefit of these provisions has frequently been the subject of adjudication in both Federal and State courts. The principle established by these decisions is that no one shall be compelled, in any judicial or other proceeding against himself, or upon the trial of issues between others, to disclose facts or circumstances that can be used against him as admissions tending to prove his guilt or connection with any criminal offense of which he may then or afterwards be charged, or the sources from which, or the means by which, evidence of its commission or of his connection with it may be obtained. The cases cover the point so completely that no comment or explanation is necessary, and it would not be useful to quote at much length from the language in which the decisions are expressed. It will be quite sufficient for every purpose of the opinion to note where they may be found (*Counselman v. Hitchcock*, 142 U. S., 547; *Emery Case*, 107 Mass., 172; *State v. Newell*, 58 N. H., 314; *ex parte Boscowitz*, 84 Ala., 463; *Minters v. People*, 139 Ill., 363; *Temple v. Commonwealth*, 75 Va., 892; *Printz v. Cheney*, 11 Iowa, 469; *People v. Mather*, 4 Wend., 230; *People v. Hackney*, 24 N. Y., 84; *People v. Sharp*, 107 Id., 427; 1 *Burr's Trial*, 245).

"The question was fully discussed at an early day by Chief Justice Marshall on the trial of Aaron Burr, and every phase of it so completely explained and exhausted that his views were followed in the subsequent decisions. A single quotation from the language used will illustrate the scope and extent of the immunity which the witness can lawfully claim: 'Many links frequently compose that chain of testimony which is necessary to convict an individual of a crime. It appears to the court to be the true sense of the rule that no witness is compelled to furnish any one of them against himself. It is certainly not only a possible but a probable case, that a witness by disclosing a single fact may complete the testimony against himself, and to a very effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself would be unavailing, but all other facts without it would be insufficient. While that remains concealed in his own bosom he is safe, but draw it from thence and he is exposed to a prosecution. The rule that declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. * * *'

"All the leading authorities were elaborately reviewed in the recent case of *Counselman v. Hitchcock*, supra, in the Supreme Court of the United States. In that case the grand jury was engaged in the investigation of certain alleged offenses by railroad companies against the recent act of Congress for the regulation of interstate commerce, and the witness, a commission merchant and dealer in grain, refused to answer certain questions as to the tariff of rates allowed to him by some of the railroads, on the ground that it might tend to criminate him. The case in all its essential features was similar to this, and the court, sustaining the privilege contended for in behalf of the witness, held that the object of the constitutional provision was to insure that a person shall not be compelled, when acting as a witness in any investigation, to give testimony which may tend to show that he himself has committed a crime and that its meaning was that a witness is protected from any compulsory disclosure of the circumstances of his offense, or the source from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction, without using his answers as direct admissions against him. This conclusion was reached, although there is a general Federal statute providing that in such cases the testimony given by the witness at the investigation shall not be given in evidence against him, subsequently, in any civil or criminal proceeding (U. S. Rev. Stat., sec 860). It seems that in such cases nothing short of absolute immunity from prosecution can take the place of the privilege by which the law affords protection to the witness. * * *

"But it is urged that the relator made use of the privilege, not in good faith, for his own protection from any peril, actual or apprehended, but as a pretext for shielding his friends or associates, and that the facts and circumstances before the learned judge presiding at theoyer and terminer were of such a nature as to warrant him in so deciding as a matter of fact, and that such finding is not reviewable here. The weight of authority seems to be in favor of the rule that the witness may be compelled to answer when he contumaciously refuses, or when it is perfectly clear and plain that he is mistaken, and that the answer can not possibly injure him, or tend in any degree to subject him to the peril of prosecution. But the courts have recognized the impossibility in most cases of anticipating the effect of the answer. Where it is not so perfectly evident and manifest that the answer called for can not incriminate, as to preclude all reasonable doubt or fair argument, the privilege must be recognized and protected." (See also *United States v. James*, supra.)

As this court, on the oral argument, expressed the opinion that the law under which these indictments are found is unconstitutional, unless section 103, which provides that no witness shall be privileged to refuse to testify on the ground that his testimony would tend to disgrace him, can be separated from the other provisions, it is unnecessary to further elaborate this proposition.

In view of that intimation, it becomes important to consider whether section 102, which compels a witness to testify under pain of being adjudged guilty of a misdemeanor and punishment by imprisonment and a fine, can be separated from section 103, for the purpose of upholding its constitutionality. It is submitted with much confidence that it can not be done. Sections 102 and 104, as well as those contained in sections 103 and 859, were originally enacted at the same time and appear in chapter 19 of the laws of the 24th of January, 1857. Section 2 of said chapter is as follows:

"SEC. 2. And be it further enacted, that no person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject to any penalty or forfeiture for any fact or act touching which he shall be required to testify before either House of Congress or any committee of either House, as to which he shall have testified, whether before or after the date of this act (and that no statement made or paper produced by any witness before either House of Congress, or before any committee of either House, shall be competent testimony in any criminal proceedings against such witness in any court of justice,)." This part in brackets is the equivalent of section 859 of the Revised Statutes. "(and no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress, or any committee of either House, for the reason that his testimony touching such fact or the production of such paper may tend to disgrace him or otherwise render him infamous)." "Provided, that nothing in this act shall be construed to exempt any witness from prosecution and punishment for perjury committed by him in testifying, as aforesaid." The parts in brackets are the equivalents of sections 103 and 859 in the Revised Statutes.

From this arrangement it becomes apparent that it was the intention of Congress that all the provisions should be taken and construed together, and when such an intention appears the courts invariably refuse to separate the sections of a law.

In *Commonwealth v. Hitchings* (5 Gray, 482), the court says:

"It is also well settled that when part of a statute is unconstitutional that will not authorize the court to declare the remainder of the statute void, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected in meaning that it can not be presumed that the legislature would have passed one without the other."

Sections 102 and 103 are so connected in substance that in the language of the above case it is not to be presumed that the legislature "would have passed one without the other."

Congress, in passing them, clearly intended that no one should be permitted to escape from testifying on the ground that he might be criminated thereby. There was undoubtedly in the mind of Congress some overpowering reason which demanded at that time that severe and drastic measure. These sections must, therefore, be read together as follows: That every person summoned before a committee shall be obliged to testify, even though his testimony may tend to criminate him, and for refusing to so testify he shall be deemed guilty of a misdemeanor. Read in that way the law would be plainly unconstitutional, and the mere fact that the law is divided into two sections does not remove the objection.

(b) But if section 103 be eliminated, section 102, standing by itself, would be void for the reason that it would include such persons as are embraced in section 103. It is broad and comprehensive, declaring that "every person who * * * refuses to answer any question * * * shall be deemed guilty of a misdemeanor," without any limitation whatever.

The courts have repeatedly held that the intention of Congress must be presumed to be as broad as its language, and that they have no power to limit the scope of the language, nor confine it to cases where Congress would have the power to make the act a crime and exclude from its operation those cases as to which it did not have the power. As section 102 is broad enough to embrace the case of a refusal where the answer would criminate, it is unconstitutional. (*United States v. Reese*, 92 U. S., 214.)

In that case an inspector of a municipal election was indicted for refusing to receive and count the vote of a citizen of African descent, under sections 3 and 4 of the act of May 31, 1870.

The power of Congress to legislate at all on the subject of voting at State elections rests on the fifteenth amendment, which provides that no person shall be refused the right to vote on account of race, color, or previous condition of servitude. It will be seen that the act under which Reese was indicted includes persons preventing citizens of other than African descent from voting, and it was held for that reason to be unconstitutional. The court said:

"We are therefore directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole or fall all together. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is whether we can introduce words of limitation into a penal statute so as to make it specific when, as expressed, it is general only.

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would to some extent substitute the judicial for the legislative department of the Government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power. Within its legitimate sphere Congress is supreme, and beyond the control of the courts, but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings must, annul its encroachments upon the reserve power of the States and the people. To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

This same doctrine was laid down in what are known as the Trade-mark Cases, (100 U. S., 82), and in *Baldwin v. Franks*, (120 U. S., 678).

Congress, under the fifteenth amendment, admittedly had the right to legislate for the protection of citizens of African descent, but because the law was not confined to that class of persons it was set aside as unconstitutional. So here Congress has the right to compel a witness to answer all questions that are not of an incriminating character that may be put to him by a committee duly and lawfully appointed, but as the law applies also to persons who may be incriminated by their answers it falls within the denunciation of the Reese case.

There seems to be no escape from that conclusion, and it follows that section 102, even if stood alone, would be unconstitutional.

Section 103 is conclusive as to the intention of Congress to embrace cases protected by the constitutional provision, and throws light upon the meaning and intention of Congress in enacting section 102.

A. J. DITTENHOEFER,
Attorney for the Defendants.

On Thursday, January 19, 1895, Associate Justice Cole of the Supreme Court of the District of Columbia, after argument upon the demurrers filed in the several cases hereinafter named, delivered his opinion orally in the said cases, and has furnished to the compiler the following written opinion therein, viz:

INDICTMENTS FOR THE VIOLATION OF SECTION 102 OF THE REVISED STATUTES OF THE UNITED STATES.

THE UNITED STATES v. ALLEN L. SEYMOUR.

THE SAME v. ELISHA J. EDWARDS.

THE SAME v. JOHN S. SHRIVER.

THE SAME v. JOHN E. SEARLES.

THE SAME v. HENRY O. HAVEMEYER.

OPINION UPON THE DEMURRERS FILED IN THE ABOVE ENTITLED CAUSES.

During the pendency in the court of appeals of the cases of the United States against Chapman and the same against Macartney, demurrers to each of the indictments in the five cases first above mentioned were argued, in which, in addition to the question argued in the two cases last mentioned, the unconstitutionality of section 102 was urged upon several grounds, as well as the question whether the indictments are not faulty in failing to charge that the refusal on the part of the defendants to answer the questions put to them respectively was wrongful or unlawful, as well as willful. Those points were not made in argument before me in the cases of Macartney and Chapman, but were, as I was informed, in the court of appeals, and it therefore seemed to be the proper course to await the opinion of that court in the last-mentioned cases before announcing any determination in these. The opinion of that court disposes of those questions as well as all others argued in the Macartney and Chapman cases against the demurrants.

As the indictments in the cases under consideration charge a refusal against the defendants to answer questions under the same resolution of inquiry of the Senate set forth in the indictments against Macartney and Chapman, the decision of that court in those cases that section 102 is constitutional, and that the Senate had the jurisdiction to make the investigation by requiring witnesses to testify, control in these cases. The same is also true of the questions whether it was necessary to set forth in the indictments the proceedings provided for in section 104 of the Revised Statutes, and whether it was necessary that the indictments should contain an allegation that the failure to answer was wrongful or unlawful, as both of those points were made and argued before the court of appeals, and the determination of them against the demurrants necessary in order to sustain the indictments, though nothing is expressly said upon these last-named points, in the opinion of the court of appeals.

That leaves for determination in each of the cases under consideration whether the questions put to each of the witnesses were pertinent to the subject-matter of inquiry, and whether either of the defendants were excused from answering on the ground that the information sought was privileged from discovery, or whether an answer might render the person answering liable to a criminal prosecution, and some questions as to uncertainty in the allegations of some of the indictments.

In the case against Mr. Seymour the allegations of the indictment are precisely the same, and the questions put to him were identical in their nature with those in the Macartney and Chapman cases, and the opinion in those cases necessarily rules the Seymour case.

As to the cases against Shriver and Edwards. These defendants were newspaper correspondents and had published articles in their respective papers to the effect that the officers of the sugar trust had dictated the sugar schedule in the proposed amendments to the tariff bill, going so much into detail as to specify time and place. It might well be inferred from the tenor of the articles that the correspondents knew the facts or had them from some reliable person who had knowledge thereof. Each was summoned before the committee, and upon his examination stated that he had not personal knowledge of the facts, and when asked the source of his information declined to give it. Were the questions inquiring the source of information of these witnesses pertinent?

One of the matters which the committee was directed to investigate was the truth or falsity of these charges made in the newspapers. If the defendants had had knowledge of the facts, such knowledge would have been pertinent. It must follow that if they knew of persons who claimed to have knowledge of the facts, that was a material and pertinent matter for the committee to know, that it might obtain the facts from such person or persons.

But it is argued that these defendants were excused from answering, because an answer might have rendered them liable to a criminal prosecution. But the indict-

ments do not allege that they or either of them based their refusal to answer upon that ground. This is a personal privilege which no one but the witness can claim, and he may waive it. If, as matter of fact, either of them based his refusal to answer on that ground it may be proved under proper pleadings at the trial, and the party in this way obtain the benefit of that objection. But the question whether either of these defendants should have been excused from answering upon this ground, does not arise upon the demurrers.

It is also argued that the information upon which these articles were based were "privileged communications." No case is cited in which any court has held that communications made to newspaper editors or correspondents are privileged. It is claimed that public policy requires the rule relating to privileged communications to be extended to include those made to newspapermen in their profession or employment of gathering and disseminating news, and a quotation is made by the learned counsel from Hegeman on Privileged Communications in support of the argument. But the author admits that there is no support for the position in adjudged cases, and it seems that such a rule would be in violation of a sound public policy, and that its tendency would be to greatly lessen the power for good which the public press now enjoys and exercises so beneficially.

Let it once be established that the editor or correspondent can not be called upon in any proceeding to disclose the information upon which the publications in his journals are based, and the great barrier against libelous publications is at once stricken down, and the greatest possible temptation created to use the public press as a means of disseminating untruthful scandal, thereby tending to lessen, if not destroy, its power and usefulness. 1 Green. on Ev. § 451 and authorities there cited.

In the Shriver case, it is claimed, that the question was not sufficiently specific, it being, "What have you to say now?" But on the day previous he was asked the name of the Congressman who gave him the information stated in the article referred to in the indictment, and he declined to answer at that time, and asked until the next day to consider whether he would answer or not. When he was again before the committee, and his attention called to the question of the preceding day by repeating it, he was asked as above stated "What have you to say now?" There can be no doubt but the witness fully understood the question put to him. There is nothing in this point.

In the cases against Havemeyer and Searles, the defendants are, respectively, the president, and secretary and treasurer of the American Sugar Refining Company, commonly known as the "Sugar Trust." They were each asked whether the said corporation had made any contributions to the political campaign funds of any political party in 1892 or 1893, and answered that it had made none to any national committee, but had made some to State and local campaign committees in several states. Being asked the amounts of such contributions, they declined to answer.

It is contended that these questions are not pertinent to the subject-matter of the inquiry before the Senate. Apply to them the test given in the opinion of Chief Justice Alvey in the Chapman case. Suppose these witnesses could truthfully have answered and had stated in answer to the first question that no contribution had been made either to national, State, or local committees? This would have entirely negatived the charge that the sugar schedule had been made up in the interest of the sugar trust in consideration of large sums of money contributed by it to the campaign fund of the Democratic party. In order to ascertain whether the sugar schedule had been made up in consideration of large contributions to the Democratic campaign fund, it was necessary first to ascertain whether any contributions had been made, and when these witnesses stated that there had been, the amount thereof became of the utmost importance, especially as one or both of the newspaper articles referred to in the resolution charged substantially that the contribution of the Sugar Trust was enormous, so much so as to indicate that the officers of the trust expected some direct benefit therefrom.

But it is contended that the contribution to a campaign fund is a matter into which the Senate has no right to inquire. This may be conceded as a general proposition. But when it was gravely and earnestly charged that an effort was being made to enact into law a great financial advantage to this corporation in consideration of an enormous sum of money paid by it to secure the success of the dominant party, and in pursuance of a promise made to it at the time of the contribution by persons high in the councils of that party, there should be no doubt about the right and power of the Senate to ascertain the truth in relation to such charge.

Nor is the objection that the questions were immaterial because they related to State and local contributions tenable. The resolutions do not confine the inquiries of the committee to contributions to national committees. Besides contributions to State and local committees are quite as advantageous to the party at large as if the contribution were placed in the hands of the national committee. In either event the money would be used in a State, and at an election where national officers were being chosen. The question which the committee was investigating was not whether

the Sugar Trust had made a contribution to the national committee, but whether it had made *any contribution, and whether the sugar schedule had been made up in its interest in consideration thereof.*

It is argued that it appears from the indictments that these witnesses did not possess the information sought by the questions put to them, and therefore they were excusable for not answering. It is true that they said that the amounts of the contributions would appear upon the books of the corporation, but they did not say that they did not know the amounts independent of the books. Besides, Mr. Havemeyer declined to answer upon the express ground that he did not consider the information material, and Mr. Searles gave no reason for refusing to answer, and it does not appear by fair implication that he did not have knowledge of the facts sought to be elicited by the questions.

Again, it is contended that the questions put to these witnesses were put by and were the questions of Senator Allen and not the questions of the committee. But the allegations of the indictments are that these questions were put by Mr. Allen for and on behalf of the committee, and they were afterwards repeated by the chairman. It sufficiently appears that the questions were adopted by and were the questions of the committee.

What has been said in relation to the witnesses Shriver and Edwards being excused upon the ground that their answers might tend to criminate them applies also to Messrs. Havemeyer and Searles.

In my opinion the indictment in each of these cases charges an offense against the defendant, and an order will be entered in each case overruling the demurrer and requiring the defendant to plead.

On January 21, 1895, the said Elverton R. Chapman, by his attorneys, Messrs. Shellabarger and Wilson, presented an application to the Supreme Court of the United States for leave to file a petition praying that the writ of habeas corpus might issue from said court, directed to the United States marshal for the District of Columbia, commanding him to produce said petitioner before said court, he having, January 18, been surrendered by his bondsman to the supreme court of said District, which issued an order committing him to the custody of said marshal.

In support of said petition, Messrs. Shellabarger and Wilson submitted a brief on behalf of said Chapman, from which the following additional matter is taken, as embodying the main grounds on which the petitioner relied, viz:

[NOTE.—We have divested the brief filed by us in the court of appeals of the District of Columbia in the above-named case of Elverton R. Chapman of all matter not going to the question of the power and jurisdiction of the Senate of the United States, the Senate Committee of Investigation, named in the above-named indictment, and of the said criminal court, in and over said matters entering into said prosecution of the said Chapman; and so divested, we venture, with the leave of the court, to file said brief, in this court, in support of said application for said writ of habeas corpus. We file the said brief addressed exclusively to said matters of power and jurisdiction because said question of jurisdiction is the only question entering into the merits of our said application.]

It may not be amiss to state, at the opening of this argument, some points bearing upon the matter of the practice and the powers of this court relating to the granting of our present application.

1. We state the first of these preliminary propositions in the following words, taken from the language of this court in the opinion, by Justice Bradley, in the Nielsen Case (131 U. S., 182):

"It is firmly established that if the court which renders a judgment has not jurisdiction to render it, either because the proceedings, or the law under which they are taken, are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally, and a defendant who is imprisoned under and by virtue of it may be discharged from custody on habeas corpus. This was so decided in the cases of *Ex parte Lange* (18 Wall., 163) and *Ex parte Siebold* (100 U. S., 371), and in several other cases referred to therein."

2. This writ will not be refused by this court because the same remedy sought by this application might be obtained through the writ of habeas corpus from some inferior court in this District, as, for example, from said criminal court of the District or from said court of appeals.

This is so because it is disclosed by the exhibits attached to the petition for the writ filed herein, that both of these courts have passed adversely to Mr. Chapman

upon the only question entering into the matter of the propriety of granting a writ of habeas corpus, to wit, the right, power, and jurisdiction to imprison the accused under and by virtue of said prosecution, and have held that such jurisdiction exists, and said criminal court made the order for said imprisonment.

This court, in *Terry's Case* (128 U. S., 302), uses the following language, showing that when the conditions under which an application for a writ of habeas corpus is made to this court are such as we have just stated, to wit, adverse actions by the courts below, then this court will (all other conditions being favorable to the allowance of the writ) not drive the party to an application to the inferior courts, but will allow the writ. We quote:

"In *Sawyer's Case* (124 U. S., 200) this court entertained an original application for a writ of habeas corpus without requiring the petitioner to apply, in the first instance, to the proper circuit court; but, in that case, as in this, the application proceeded upon the ground that the circuit court itself had made the order by which he was alleged to have been deprived of his liberty in violation of the Constitution of the United States."

3. It is no objection, we submit, to the allowance and the issuing by this court of said writ that in said criminal court there has been no trial or final judgment.

This is true for, among others, the following reasons:

(a) It is insisted by this application that such trial and final judgment would be absolutely void—a mere nullity—and would, therefore, be subjecting the accused to grievous annoyance, vexation, hardship, and disgrace in order to reach such final judgment, which, when reached, would be utterly void. This, we submit, this court will not do, but, on the contrary, will grant the writ on this application, and will inquire into said question of jurisdiction now unless the court can see clearly that there is no rational foundation for said contention asserting said absence of jurisdiction.

In principle this was held in *Ex parte Royall* (117 U. S., 241), where the court held what the headnote thus states, after first stating that the circuit courts of the United States have jurisdiction on habeas corpus to discharge from custody persons restrained of their liberty in violation of the Constitution of the United States, but who at the time are held under State process for trial on an indictment charging them with an offense against the laws of the State:

"When a person is in custody, under process from a State court of original jurisdiction, for an alleged offense against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted, but this discretion should be subordinated to any special circumstances requiring immediate action. After conviction of the accused in the State court, the circuit court has still a discretion whether he shall be put to his writ of error to the highest court of the State or whether it will proceed by writ of habeas corpus summarily to determine whether he is restrained of his liberty in violation of the Constitution of the United States."

(b) But the discretion named in the headnote just quoted will, in a case like the present, be exercised in favor of now granting the writ, for the reason that if the writ is refused the citizen, the accused is absolutely and totally cut off from all right, power, and opportunity to have the question of the constitutionality of his imprisonment determined in this, the highest court existing under the Constitution.

The preliminary propositions now stated enable us to enter upon the discussion of the above-named question of power and jurisdiction of the Senate, of the Senate committee, and of the court, which we carefully consider in the following argument, and earnestly beg to the entire argument such consideration by the court as the supreme importance of the question here involved shall seem to the court to require.

We submit, in advance, and at the threshold of the argument, that these questions of jurisdiction, considered in the following argument, are all ruled and settled by the decision of this court in the case of *Kilbourn v. Thompson* (103 U. S., 168), especially as that case is explained and interpreted by Justice Miller, the author of the great opinion of the court in that case, as found at page 415 of the book published by Bancroft Davis containing the lectures by Justice Miller before the Columbian Law School of this city, a short extract from which (page 415) is quoted at printed page 18 of our argument herewith submitted.

To the foregoing application of said Chapman for leave to file a petition for a writ of habeas corpus, the Solicitor-General, Lawrence Maxwell, jr., submitted the following objections, viz:

1. The writ will not issue unless the court under whose warrant the petitioner is held is without jurisdiction. It can not be used to correct errors. (*Ex parte Watkins*, 3 Pet., 193; *Ex parte Parks*, 93 U. S., 18; *Ex parte Yarbrogh*, 110 U. S., 651; *In re Coy*, 127 U. S., 731, 756.) The latter cases really add nothing to the lucid statement

of the principle made by Chief Justice Marshall in *Ex parte Watkins*, which was a petition for a habeas corpus to discharge the petitioner from confinement under a judgment of the circuit court of the District of Columbia.

2. The petitioner, recognizing this rule, insists that the supreme court of the District of Columbia, under whose warrant he is held, is without jurisdiction, because Revised Statutes, section 102, upon which the indictment is based, is unconstitutional. I submit—

(a) That there is not sufficient doubt of the validity of that section to warrant the issuing of the writ. The claim that Revised Statutes, section 103, is unconstitutional does not affect the validity of a prosecution based upon section 102, where, as at bar, no privilege was claimed by the accused upon the ground that an answer to the question put by the Senate committee would incriminate him.

(b) If Revised Statutes, section 102, is unconstitutional, the petitioner has a remedy by writ of error. If so, he must resort to that writ, and will be denied relief by habeas corpus. In *re Frederick*, petitioner (149 U. S., 70).

Prior to the act of February 9, 1893 (c. 74, 27 Stat., 434), establishing a court of appeals for the District of Columbia, this court had no jurisdiction to review criminal cases in the supreme court of the District of Columbia (In *re Heath*, petitioner, 144 U. S., 92; *Cross v. United States*, 145 U. S., 571); but it would seem by section 8 of that act that the judgments of the supreme court of the District, reviewable in the first instance in the court of appeals, may be reviewed ultimately in this court, even in criminal cases, where the validity of a statute of the United States is drawn in question.

The section is as follows:

SEC. 8. That any final judgment or decree of the said court of appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all causes in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as heretofore provided for in cases of writs of error on judgment or appeals from decrees rendered in the supreme court of the District of Columbia; and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States.

3. The real claim of the petitioner is that the Senate committee did not have lawful authority to make the inquiry which is the basis of the indictment. But that is the very question to be determined by the supreme court of the District of Columbia, and the objection raised by the petitioner is really to the authority of the Senate, and not to the jurisdiction of the court. But nothing short of want of jurisdiction in the court by whose warrant he is held will justify his release on habeas corpus.

In reply to the foregoing brief of the Solicitor-General, Messrs. Shellabarger and Wilson and Mr. George F. Edmunds submitted the following brief:

In order that the court may understand the precise situation of this case, we make the following brief statement:

1. The defendant was indicted under section 102, Revised Statutes, of the United States, for having refused to answer certain questions set forth in the indictment, Exhibit A, propounded to him by a committee of the Senate.

2. He demurred to this indictment, on the grounds, among others, that said section 102 is unconstitutional and void, and therefore the court had no jurisdiction to try him on said indictment; that, also, under the resolution of the Senate, upon which the committee was proceeding, the committee had no authority to ask him the questions, was without jurisdiction in the premises, and that the court was without jurisdiction to try him on an indictment based upon such refusal; and, also, that section 102 is unconstitutional, because it was an abdication or surrender of the powers of the Senate in respect of contempts of its authority and power.

3. This demurrer was overruled by the justice holding special term for criminal business of the supreme court of the District of Columbia.

4. Thereafter an appeal was allowed, upon special application made therefor, by the court of appeals of the District of Columbia, from said order of the special term of the supreme court of the District of Columbia overruling said demurrer.

5. Upon hearing had upon said appeal, the said court of appeals affirmed the judgment and order of the lower court overruling said demurrer, and remanded said case for further proceedings.

It will be seen, therefore, that this question as to the jurisdiction of the supreme court of the District of Columbia has already been passed upon by that court, and also by the court of appeals; and consequently it is henceforth a mere formality to

present that question to these tribunals; and hence, if the petitioner may avail himself of the writ of habeas corpus to test this question of jurisdiction, there is no substantial reason why it may not be permitted to him now, instead of waiting until a trial before the supreme court of the District, and another appeal to the court of appeals, which could only result in a repetition of what has already been done.

I

We do not dispute the first point made in the brief of the Solicitor-General.

We reply to subdivision (a) of the second point contained in said brief, alleging that the unconstitutionality of said section 102 is too doubtful to justify the issuance of the writ of habeas corpus—

(1) That that question is the very one on which we have a right to be heard, it being the point in dispute;

(2) That the unconstitutionality of said section 102 is no more doubtful than is the proposition that Congress can not abdicate one of the functions conferred by the Constitution and which can not be abdicated without endangering the very existence of the Government (see Story, bottom p. 65, top p. 67, petitioner's printed brief herein);

(3) The alleged unconstitutionality of section 102 is not the only thing in the case which defeats the jurisdiction of the court; that jurisdiction is defeated equally by the two considerations urged in the case in the court below, and in our brief for the writ, (a) that the Senate could not confer upon the committee the power to make the search into the private affairs of petitioner, except where the Senate showed, in its resolution authorizing the investigation, that the investigation was for the purpose of aiding Congress in the exercise of its judicial functions, which the Senate resolution does not do; and (b) that the terms of the Senate resolution not only do not affirm that such aid was sought in passing said resolution, but show the opposite;

(4) It is no answer to say that petitioner did not claim privilege on the ground that the answer would tend to criminate him; the unconstitutionality of section 102 being based upon the proposition that section 103 is unconstitutional, for the reasons stated in the cases from this court, cited at page 9 of the printed petition herein; and therefore section 103 herein can not be executed, because it is intrinsically void; and it being inseparable from section 102, section 102 can not be held valid and enforceable in the absence of section 103, for the reasons stated at bottom page 8 and top page 9 of printed petition herein, this being rested upon the principle quoted (on the eighth page of said petition) from the case of *Sprague v. Thompson* (118 U. S., 91), last paragraph of head note; and section 102 independent of section 103 is unconstitutional, because it without limit or qualification compels a party to answer whether the answer would criminate him or not, and it is not in the power of a court to eliminate from the statute, so as to make it only apply to cases within the power of Congress. (See Trade-mark cases, 100 U. S., pp. 96-98, and cases cited.)

In reply to subdivision (b) of said paragraph two:

The case there cited, *In re Frederick* (149 U. S., 70), was one where the party had been convicted in a State court, and that conviction affirmed in the supreme court of the State, after which he applied to the circuit court of the United States for the writ of habeas corpus, and, the writ being denied him, he brought the case to this court by appeal from the decision of the circuit court refusing the writ of habeas corpus; and this court held that he might have taken a writ of error directly to the State court, and that, under the circumstances of the case, that was his proper remedy. And it will be further observed (p. 77 of said case) that this court gave as a reason for refusing the writ of habeas corpus and requiring him to proceed by writ of error, that under the latter the State court would be left "to deal with him thereafter within the limits of proper authority, instead of discharging him by habeas corpus proceedings, and thereby depriving the State of the opportunity of asserting further jurisdiction over his person in respect to the crime with which he is charged."

In this same case (p. 78) this court recognized that the proceeding might be by habeas corpus, although a writ of error could be prosecuted, and cites *Medley*, petitioner (134 U. S., 160), and adds that "in the absence of special facts and circumstances it is the better practice to resort to the writ of error instead of the writ of habeas corpus," where the prisoner claims that the judgment of the State court violates his rights under the Constitution.

If the same rule is applied as to cases arising in the Federal courts, as contradistinguished to the State courts, then there are special facts and circumstances in this case because of which the writ of habeas corpus should be granted, namely, that the vital question in the case has already been decided, as above stated, and there is no such reason existing in this case as was given in the case above referred to for the refusal of the writ, and requiring the party to resort to writ of error, to wit, that of

so dealing with the case as that the authorities might take some other steps, etc. In this case that is impossible, because if the act is unconstitutional no other proceeding can be taken.

Hence, this case of Frederick (*supra*) clearly has no material bearing upon the case at bar, because of the total dissimilarity between the facts of the two cases.

But we submit that there is no writ of error from this court to the supreme court of the District of Columbia, or to the court of appeals of the District of Columbia, in a criminal case.

This proposition is submitted upon the authority of the cases of *Farnsworth v. Montana* (129 U. S., 112 *et seq.*); *In re Heath* (144 U. S., 92); *Cross v. United States* (145 U. S., 571); *In re Schneider* (148 U. S., 157).

By reference to these authorities it will be seen that this court has decided under the act of 1885, which is precisely like, word for word, section 8 of the act creating the court of appeals of the District of Columbia (quoted at pp. 2 and 3 of the Solicitor-General's brief), that a writ of error from this court is not available in a criminal case, as applicable to the District of Columbia. (*Farnsworth v. Montana*, 129 U. S., 112, 113.)

II.

To the third proposition in said brief, that the real position of petitioner is that the committee did not have lawful authority to make the inquiry, the reply is:

(1) That it is not an accurate statement of petitioner's position.

(2) That this is only one of the several grounds on which the absence of jurisdiction is rested, the other grounds being those stated at pages 5, 6, 7, 8, 9, and 10 of the petition herein.

(3) It is impossible rationally to assert that because the court below decided it had jurisdiction, or decided that the Senate had jurisdiction, that, therefore, and, thereupon, if, as a matter of fact and law, the Senate was without jurisdiction, such decision of the court below asserting jurisdiction is conclusive on the question of jurisdiction upon this and all other courts. Such a holding is an end of all inquiries on habeas corpus into an imprisonment ordered by a court below in the absence of power and jurisdiction so to order.

(4) This identical question is decided in the case of *Kilbourn v. Thompson* (103 U. S., 196), where the court states what we quote at bottom of page 50 and top of page 51 of our brief filed in support of this application. There the court held that because the resolution of the House was in excess of its authority and beyond its jurisdiction, therefore, every step against Kilbourn resulting in his imprisonment was absolutely void and his imprisonment was a false imprisonment. The principle there asserted is here equally applicable and conclusive.

(5) Unless the Senate committee had jurisdiction to make inquiry, it is impossible for the court to have jurisdiction predicated upon that inquiry.

Our contention is that no such jurisdiction had been given to the committee, and therefore this is a matter which it is within the jurisdiction of this court to determine; and while it may be as claimed by the Solicitor-General, that it is a question to be determined by the supreme court of the District of Columbia, since it is a question involving the jurisdiction of the court, the ruling of the supreme court of the District on that subject may be reviewed by this court.

Much of what is stated in this reply brief is stated on authorities cited at pages 2, 3, 4, 4a, 4b of our brief, filed in support of our petition for writ of habeas corpus, to which pages we refer as additional reply to the brief of the Solicitor-General.

S. SHELLABARGER,
J. M. WILSON,
GEO. F. EDMUNDS,
Attorneys for Petitioner.

On the same day (January 21) the said John S. Shriver, by his attorney, A. J. Dittenhoefer, also presented an application for leave to file a petition praying that the writ of habeas corpus might issue, etc., in his behalf; in which the facts are set forth. In support of said application said counsel filed a brief in which, after reciting the argument submitted in the court below, and referring to the refusal of said Shriver "to state the name of the person who had informed him of the facts contained in said statement as aforesaid, etc.," it is further said:

The question was not pertinent for the following, among other, reasons: The preamble to the resolution only refers to articles in the Sun and Philadelphia Press, not Mail and Express. The committee, therefore, could not inquire into matter contained in an article in the Mail and Express, but it may be said that the committee

was authorized to inquire into matters contained in charges that may be filed before the committee, but there is no allegation in the indictment that charges relating to the article in the Mail and Express concerning which Shriver was examined were filed before the committee.

This is additional to the points I took before the committee, and seems to me to be conclusive.

The parenthetical explanations in the indictment seem to be in nearly every case unauthorized.

The indictment is implex and duplex and full of redundant and irrelevant matter.

On February 4, 1895, the Supreme Court denied the said applications for leave to file petitions for the issuance of writs of habeas corpus, the decision being announced by Mr. Chief Justice Fuller, and is as follows:

This was an application by Elverton R. Chapman for leave to file a petition for the writ of habeas corpus. Petitioner represented that he was unlawfully restrained of his liberty by the United States marshal for the District of Columbia, and stated: That on June 29, 1894, an indictment was returned against petitioner in the supreme court of the District of Columbia, holding a criminal term, based upon section 102 of the Revised Statutes of the United States, upon which he voluntarily surrendered himself into the custody of the court, July 2, 1894, and entered into a recognizance for his appearance as he might thereunto be required, and thereupon petitioner filed a demurrer to the indictment; that October 1, 1894, another indictment was found against petitioner under said section, which indictment was returned as a substitute for and in lieu of the former indictment, and a certified copy whereof was annexed to the petition.

The indictment averred that Chapman was summoned and appeared as a witness before a special committee of the Senate of the United States in relation to a matter of inquiry before said committee, and that he refused to answer questions pertinent to the matter of inquiry referred to such committee.

The petition then alleged that petitioner, on October 11, 1894, filed his demurrer to the last-named indictment, together with a note appended thereto stating the grounds of the demurrer; that November 17, 1894, the demurrer was overruled and petitioner required to appear and plead; that afterwards the court of appeals of the District of Columbia allowed an appeal from the order of the supreme court overruling the demurrer, and on December 14, 1894, the matter was duly submitted to the court of appeals and taken under advisement; that on January 7, 1895, the court of appeals gave judgment, affirming the order of the supreme court overruling the demurrer and requiring petitioner to plead to the indictment, and the cause was remanded by the court of appeals to the supreme court to be proceeded in, and is now duly pending in the last-named court.

The petition further stated that, on January 18, 1895, petitioner was surrendered upon his recognizance and committed to the custody of the United States marshal for the District of Columbia, and petitioner charged that his detention was unlawful because in violation of the laws and Constitution of the United States and for want of jurisdiction in the court to make the order of imprisonment.

It was averred that the questions and each of them set forth in the indictment, and which petitioner declined to answer, were questions in regard to the lawful private business of petitioner which he was not bound to answer, and was protected from answering by provisions of the Constitution and laws of the United States; and were questions not authorized by the resolution of the Senate upon which the investigating committee rested its authority; that the conditions under which the questions were asked were not such as authorized the committee to make search into the private affairs of petitioner, nor were they such as authorized or permitted the Senate to demand or compel answers to questions which would disclose the private business of petitioner; that the refusal of petitioner to answer the questions was not a misdemeanor within the true intent and meaning of section 102 of the Revised Statutes; that that section was unconstitutional and void in that it attempted to transfer the power to punish acts constituting contempt of the Houses of Congress, respectively, to the exclusive jurisdiction of the criminal court of the District of Columbia; that if the section was not designed to transfer such jurisdiction to the criminal court, but was designed to add to the power of both Houses to punish for contempt, the power and jurisdiction in the criminal court to punish the same acts as misdemeanors, then the section was void because in contravention of the fifth amendment to the Constitution; that sections 102 and 103 of the Revised Statutes were to be taken together as parts of a single and indivisible scheme, and the provisions of section 102 could not be enforced in disregard of the provisions of section 103 consistently with the intention of Congress, and if section 103 was not capable of being executed because unconstitutional, then section 102 could not be executed; that section 103 was unconstitutional because compelling involuntary answers to

questions put by committees of either House of Congress, although the witness might decline to answer on the ground that his testimony or his production of papers might tend to disgrace him or otherwise render him infamous; and that upon these and other grounds petitioner's imprisonment was without any authority of law and in excess of the jurisdiction of the court.

Sections 102, 103, and 104 of the Revised Statutes are as follows:

"SEC. 102. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than twelve months.

"SEC. 103. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous.

"SEC. 104. Whenever a witness summoned as mentioned in section one hundred and two fails to testify, and the facts are reported to either House, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action."

The court of appeals held that section 102 was constitutional and valid; that the inquiry directed by the resolution of May 17, 1894, was within the power of the Senate to execute by requiring witnesses to testify; and that the questions propounded to Chapman were pertinent to the subject-matter given in charge to the committee; and was of the opinion that the indictment was good and sufficient. (23 Wash. Law Rep., 17.)

Mr. Chief Justice Fuller delivered the opinion of the court:

The general rule is that the writ of habeas corpus will not issue unless the court, under whose warrant the petitioner is held, is without jurisdiction; and that it can not be used to correct errors. (Ex parte Watkins, 3 Pet., 197; Ex parte Parks, 93 U. S., 18; Ex parte Yarbrough, 110 U. S., 651; Ex parte Bigelow, 113 U. S., 328; In re Coy, 127 U. S., 756; In re Schneider, petitioner, 148 U. S., 162.) Ordinarily, the writ will not lie where there is a remedy by writ of error or appeal. (In re Frederick, petitioner, 149 U. S., 70; In re Tyler 149 U. S., 164, 180; In re Swan, 150 U. S., 637, 648.) Yet in rare and exceptional cases, it may be issued although such remedy exists. (Ex parte Royall, 117 U. S., 241; New York v. Eno, 155 U. S., 89.)

We have heretofore decided that this court has no appellate jurisdiction over the judgments of the supreme court of the District of Columbia in criminal cases or on habeas corpus. (In re Heath, petitioner, 144 U. S., 92; Cross v. United States, 145 U. S., 571; Cross v. Burke, 146 U. S., 82.) But it is contended that under section 8 of the act of February 9, 1893 (27 Stat., 434, c. 74), establishing a court of appeals for the District of Columbia, the judgments of the supreme court of the District reviewable in the court of appeals may be reviewed ultimately in this court even in criminal cases, where the validity of a statute of, or an authority exercised under, the United States is drawn in question. We do not feel constrained, however, to determine how this may be, as we are of opinion that the application must be denied on another ground.

In *New York v. Eno*, supra, the circumstances under which a court of the United States should, upon habeas corpus, discharge one held in custody under the process of a State court were considered, as they had previously been in *Ex parte Royall* (117 U. S., 241), and the views expressed in the latter case reiterated with approval. It was held that Congress intended to invest the courts of the Union and the justices and judges thereof with power upon writ of habeas corpus to restore to liberty any person within their respective jurisdictions held in custody, by whatever authority, in violation of the Constitution or any law or treaty of the United States; that the statute contemplated that cases might arise when the power thus conferred should be exercised during the progress of proceedings instituted in a State court against a prisoner on account of the very matter presented for determination by the writ of habeas corpus; but that the statute did not imperatively require the circuit court by that writ to wrest the prisoner from the custody of the State officers in advance of his trial in the State court; and that while the circuit court had the power to do so and could discharge the accused in advance of his trial, it was not bound in every case to exercise such power immediately upon application being made for the writ. The conclusion was that, in a proper exercise of discretion, the circuit court should not discharge the petitioner until the State court had finally acted upon the case,

when it could be determined whether the accused, if convicted, should be put to his writ of error, or the question determined on habeas corpus whether he was restrained of his liberty in violation of the Constitution of the United States. These principles were fully discussed in the cases of the appeals of Royall from judgments on habeas corpus of the circuit court of the United States for the eastern district of Virginia (117 U. S., 241), and in addition thereto Royall made an original application to this court for a writ of habeas corpus, which was denied upon the grounds stated in the previous cases. (Ex parte Royall, 117 U. S., 254.)

It must be admitted that special reasons of great weight exist why this should be the rule in respect of proceedings in a State court which are not applicable to cases in the courts of the United States. Nevertheless we regard it as a judicious and salutary general rule not to interfere with proceedings pending in the courts of the District of Columbia or in the circuit courts in advance of their final determination. In *Ex parte Mirzan* (119 U. S., 584), it was decided that this court would not issue a writ of habeas corpus, even if it had the power, in cases where it might as well be done in the proper circuit court, if there were no special circumstances in the case making direct action or intervention by this court necessary or expedient. And in *In re Huntington* (137 U. S., 63), we applied that rule in the case of a person claiming to be detained by a United States marshal for the southern district of New York, by virtue of an order purporting to be an order of the circuit court of the United States for the district of Colorado. In *In re Lancaster* (137 U. S., 393), it was held that this court would not interfere where petitioners had been indicted in a circuit court of the United States and taken into custody, but had not invoked the action of the circuit court upon the sufficiency of the indictment by a motion to quash or otherwise, although the contention was that the matters and things set forth and charged in the indictment did not constitute any offense or offenses under the laws of the United States or cognizable in the circuit court.

In the case before us, the question as to the jurisdiction of the supreme court of the District of Columbia has indeed already been passed upon by that court and also by the court of appeals, upon a demurrer to the indictment, but the case has not gone to final judgment in either court, and what the result of a trial may be can not be assumed. We are impressed with the conviction that the orderly administration of justice will be better subserved by our declining to exercise appellate jurisdiction in the mode desired until the conclusion of the proceedings. If judgment goes against petitioner and is affirmed by the court of appeals and a writ of error lies, that is the proper and better remedy for any cause of complaint he may have. If, on the other hand, a writ of error does not lie to this court, and the supreme court of the District was absolutely without jurisdiction, the petitioner may then seek his remedy through application for a writ of habeas corpus. We discover no exceptional circumstances which demand our interposition in advance of adjudication by the courts of the District upon the merits of the case before them. Leave denied.

Mr. Justice Field dissented.

As a matter of convenience of reference, as well as to include the entire history of these cases—save the evidence—in one volume, the final report of the special committee (No. 606) together with the additional views of Senators Lodge, Davis, and Allen are given, commencing on the following page.

Senate Report No. 606, Fifty-third Congress, second session.

Mr. GRAY, from the Special Committee to Investigate Attempts at Bribery, etc., submit the following

REPORT:

Your committee, appointed under the following resolution of the Senate of the 17th of May, 1894—

Whereas it has been stated in *The Sun*, a newspaper published in New York, that bribes have been offered to certain Senators to induce them to vote against the pending tariff bill; and

Whereas it has also been stated in a signed article in *The Press*, a newspaper published in Philadelphia, that the sugar schedule has been made up as it now stands in the proposed amendment in consideration of large sums of money paid for campaign purposes of the Democratic party: Therefore,

Resolved, That a committee of five Senators be appointed to investigate these charges and to inquire further whether any contributions have been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes or to secure or defeat legislation, and whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate, and with power to send for persons and papers and to administer oaths.

Resolved further, That said committee be authorized to investigate and report upon any charge or charges which may be filed before it alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation.

submit the following report:

They have heretofore made full report to the Senate of their investigation as to the matters concerning Senators Hunton and Kyle, mentioned in the first paragraph of the foregoing resolution. No other testimony under that head has been submitted to the committee and they have nothing to add to the report already made.

There remain four other distinct matters with the investigation of which the committee was charged by the Senate:

First. That it had been stated in *The Press*, a newspaper published in Philadelphia, that the sugar schedule had been made up, as it then stood in the proposed amendment to the tariff bill as it came from the House of Representatives, in consideration of large sums of money paid for campaign purposes of the Democratic party.

Second. Whether any contributions had been made by the sugar trust, or any person connected therewith, to any political party for campaign or election purposes or to secure or defeat legislation.

Third. Whether any Senator had been or was speculating in what are known as sugar stocks during the consideration of the tariff bill then before the Senate.

Fourth. To investigate and report upon any charge or charges which might be filed before the committee alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt had been made to so influence legislation.

As to the allegations in the Press newspaper, the committee find that an article, signed "Holland," was published in that newspaper on the 14th of May, 1894, containing certain charges and imputations against the Senate and Senators in regard to the sugar schedules in the tariff bill then pending before the Senate, the most direct of which, and the one which more than any other contained a specific statement affecting the integrity of members of the Senate, as well as the integrity of the Executive Department, is in the following paragraphs:

AN EXTRAORDINARY INCIDENT.

But the highest, the most emphatic and sufficient indication that the administration was bound to maintain these campaign pledges and to protect the men who had given half a million dollars, was furnished by an extraordinary and unexpected incident that happened not long after the Wilson bill went to the Senate. Senator Brice had represented to the President that these 3 trans-Mississippi Senators, who had charge of the bill, were determined to make sugar of all sorts absolutely free. Meyer and Croker had represented the same thing to Dan Lamont. Whitney and Benedict indirectly approached the administration protesting, and at last the administration determined to act.

Upon one occasion, some time in February, when the Finance Committee, or the Democratic members of it, were in perhaps informal session, there came into the room, unexpectedly to all those present, excepting two members, none other than the Secretary of the Treasury, Mr. Carlisle. His going there at that time has never been reported until this writing of it. He went secretly and came away secretly. His visit was supposed to be a confidential one. It was a confidence not imposed upon one member of that committee, and, therefore, it is possible now to make report of what Mr. Carlisle said. They looked upon him as speaking, not so much for Mr. Carlisle, as for the administration. He did not say that he came from the President, but when he had finished making his astonishing statement, not one of those who heard him doubted that he had come from the President and was echoing the President's wishes, and giving emphasis to them by an earnest, and for him, excited manner. What he said is quoted from remembrance, but it is substantially accurate, as it was reported by one who heard it. He said:

"Gentlemen, there is one thing that I am bound to say to you as earnestly and impressively as I can do it, and I speak to you as a Democrat to Democrats. No party or the representatives of no party can afford to ignore honorable obligations. I want to say to you that there seems to be danger that this is going to be done. Gentlemen associated with the sugar-refining interests (I may tell you what perhaps you do not know) subscribed to the campaign fund of the Democratic party in 1892 a very large sum of money. They contributed several hundred thousand dollars and at a time when money was urgently needed. I tell you that it would be wrong, it would be infamous, after having accepted that important contribution, given at a time when it was imperatively needed, for the Democratic party now to turn around and strike down the men who gave it. It must not be done. I trust that you will prepare an amendment to the bill which will be reasonable and in some measure satisfactory to these interests."

That, in substance, was the plea of Secretary Carlisle to the members of the Finance Committee, that they respect the obligations entered into by the national campaign committee and the personal representatives of Mr. Cleveland in 1892. It was a plea powerfully put. Mr. Carlisle said but little more; he had said enough. He turned and left the committee, going away with that secrecy with which he came, but before he did so he signified his willingness himself to prepare an amendment which he thought would be fair to the Government, and yet be just to the sugar interests.

That very thing he did not long after. The chairman of the Finance Committee received and showed to certain favored friends the draft of an amendment in Secretary Carlisle's own handwriting to the sugar schedule, and that draft is in Mr. Voorhees's possession to this day, unless he has destroyed it. Secretary Carlisle had scratched out from the printed schedule the provisions as originally made and by interlineation had inserted the following words: "On all sugars not above No. 16, Dutch standard, and on all." After the word "all" the printed form remained in which mention was made of other sugars, and then this interlineation, "Instead of one-eighth of 1 per cent 45 percent ad valorem."

There is also upon the blank space at the bottom of the printed sheet, in Mr. Carlisle's handwriting, a clause providing that nothing contained in the bill shall be construed as affecting the Hawaiian reciprocity treaty. So the administration is on

record as favoring even a higher rate of protection than was afforded by the so-called Gorman bill. This speech of Secretary Carlisle's is sufficient proof of statements made earlier in this article that the sugar trust contributed \$500,000 to the Democratic campaign fund, receiving in return a pledge that no measure should be allowed to pass Congress which endangers the sugar interests.

In undertaking this branch of the investigation the committee at once sought the author of these statements, who proved to be Elisha J. Edwards, a correspondent of the Philadelphia Press, resident in New York City. Mr. Edwards appeared before the committee and, after being sworn, was interrogated by them as to the statements in the paragraphs just quoted. He stated that he had no personal knowledge of the truth of any of the allegations contained in these paragraphs. Upon further interrogation he stated that he made them upon the authority of an informant, whose name he declined to give to the committee. He stated that he had no other source of information than this undisclosed informant. The committee urged upon Mr. Edwards the necessity of giving them this name, and the importance to this investigation of his doing so; but he persisted in his refusal to disclose the name of his informant upon the ground that the information was given to him in confidence.

The committee, after having reported to the Senate this refusal of the witness to testify as to so important a matter, proceeded to examine the only parties, other than the alleged informant, who could have any knowledge on the subject, viz, Secretary Carlisle and all the Democratic members of the Finance Committee. Their sworn statements accompany this report, and justify the conclusion that the statements made in the paragraphs quoted are without foundation in fact and utterly untrue. Except that it is a fact according to Secretary Carlisle's testimony that he did, at the request of Senator Jones of the Finance Committee, draft an amendment to the sugar schedule, a copy of which, as described by Mr. Carlisle, is attached as an exhibit to the testimony herewith submitted.

The conduct of Mr. Edwards in making and publishing so specific and serious a charge against public men, and one affecting their discharge of high public duties, upon no personal knowledge, and upon no information, the source of which he is willing to disclose, calls for serious reprobation.

There has been no testimony presented before your committee, and your committee has been unable to discover any, tending to show that the sugar schedule was made up, as it then stood in the proposed amendment to the tariff bill, in consideration of large, or any, sums of money paid for campaign purposes of the Democratic party.

No witness has testified before your committee that such was the fact, and all the Democratic members of the Finance Committee, and all the Senators whose names have been mentioned in the public press as especially active in protecting the sugar-refining industries, or in whose States sugar refineries existed, have, under oath, denied that such was the truth, or that they had any knowledge or information as to any sums of money, large or otherwise, having been paid for campaign purposes of the Democratic party by the sugar trust, by those connected with it, or by anybody, as a consideration for favorable treatment of its interests by said party.

The president, vice-president, and the secretary and treasurer of the American Sugar Refining Company, popularly known as the sugar trust, have also been summoned before the committee and interrogated under oath as to these matters, and they have each denied that any

contributions were made by the sugar trust, so called, or by them individually, to the national campaign fund of either party at the last general election. These witnesses stated that contributions had customarily been made by the American Sugar Refining Company, or so-called sugar trust, to the local or State campaigns of each of the two great political parties in several States, but they also denied that any of such contributions were made for the purpose of securing or defeating legislation in Congress, or to aid in the election of any U. S. Senator, or for any other improper purpose.

No other evidence or testimony has been offered or suggested to your committee, nor has any been discovered, which would tend to support the statements of the said Edwards in this regard.

Nor is there any evidence whatever in support of the statement in the same article that either of the Messrs. Havemeyer, president and vice-president of the American Sugar Refining Company, had an interview with President Cleveland on a yacht in the summer of 1892, or the summer of 1893, in regard to the sugar interests of the Hawaiian Islands, or any other sugar interests, or the policy of the administration in regard to them. On the contrary, it has been affirmatively shown, by the testimony, that the statement is untrue as to any such interview having occurred at the time and place stated, or at any time or place.

It is, however, shown by the evidence taken by the committee that one or more of the officers of the so-called sugar trust have been in Washington constantly during the pendency of the tariff bill in the Senate. In their testimony they have stated that they were here for the purpose of looking after the interests of the sugar-refining business generally, and to that end had conferences with the subcommittee in charge of the tariff bill in the Senate, and with several other Senators, chiefly those in whose States large refineries were situated.

They denied, as did the members of the subcommittee and the Senators alluded to, that anything was said at these conferences that they would not have been willing to say in public, or that there was any improper proposal or suggestion made; and they stated that they only appealed for fair and equal treatment in common with other industries of the country. They denied, and members of the Finance Committee denied, that any meeting took place between them at the Capitol, or elsewhere, as was stated in the "Holland" letter to have taken place, and there is no evidence in support of the statements in that letter in this regard.

When interrogated as to other imputations contained in said article, too vague to be characterized as charges, the writer was unable to give any authority or suggest any foundation for his statements.

Whatever of impropriety may attach to the presence at the national capital of representatives of aggregated wealth engaged in industries affected by a tariff bill, and to their importunities for protection by Congressional legislation—and the impropriety can not be denied—no evidence has been adduced before your committee tending to show improper conduct on the part of those engaged in the framing of the sugar schedule in the tariff bill then pending before the Senate.

Though perhaps outside the scope of the duty imposed upon your committee, they take occasion to strongly deprecate the importunity and pressure to which Congress and its members are subjected by the representatives of great industrial combinations, whose enormous wealth tends to suggest undue influence, and to create in the public mind a demoralizing belief in the existence of corrupt practices.

As to the third branch of this inquiry, viz, "whether any Senator has been or is speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate," your committee deem it only necessary to refer to the testimony on that subject, herewith submitted. The testimony of Mr. Chapman, a member of the firm of Moore & Schley, bankers and brokers in New York City, who declined to state whether any Senator had speculated in sugar stocks during the pendency of the tariff bill in the Senate through the agency of his firm, seemed to make it incumbent upon the committee to ask each Senator to testify in that respect. In response to such request the sworn statement of each Senator has been taken and is made a part of this report.

By these statements it appears that two Senators, Hon. John R. McPherson, of New Jersey, and Hon. Matthew S. Quay, of Pennsylvania, have held and sold sugar certificates during the pendency of the present tariff bill. Their testimony further shows that before the voting upon the bill began each had entirely closed out his holdings. The circumstances under which these transactions were had by these two Senators are detailed in their testimony before the committee, to which the attention of the Senate is hereby called.

Before the statements of individual Senators were taken, however, every suggestion of evidence that might throw light upon the question submitted to us by the Senate was followed up and explored.

Since the examination of the Senators, an article appeared in the New York Herald of July 17, calling attention to apparently new evidence in relation to speculation by Senators in sugar stocks. Your committee thereupon continued the inquiry and, in the course of this renewed investigation, there came into the possession of your committee, as set forth in the evidence submitted herewith, a photographic copy of an order to buy sugar stocks, dated March 2, and purporting to be signed by the Hon. J. N. Camden, a Senator from West Virginia.

It is shown by the evidence that the original order was written in lead pencil on what appeared to be an old envelope. The order was not addressed or directed to any firm of brokers or to any one. The original paper was destroyed, as appears by the evidence, after the photographic copy was taken and upon the appearance of the article in the New York Herald, already alluded to. The order was first found in the hands of one Battershall, who has eluded every effort of your committee to serve a subpoena upon him and who, it is understood, has fled to Canada.

From the evidence of one witness and the circumstances disclosed by the testimony, Battershall appears to be a man of doubtful character, which, with the fact of the destruction of the original, tends to discredit the original paper; and there is testimony tending to show that the party who had the photograph taken contemplated using it for an improper purpose. Upon an examination of the photographic copy Senator Camden, who was recalled as a witness, said that the purported signature resembled, in some respects, his genuine signature, and that the body of the paper bore some resemblances to his own handwriting.

He stated it as his belief and best judgment that the paper is fictitious or a forgery, but he does not, in express terms, declare it to be a forgery and declines to swear positively that it is not in his handwriting. He denies, however, substantially, that any such order was ever executed or that any sugar stock has been bought or sold for him since the tariff bill has been under consideration, and there is no testi-

mony tending to prove that the supposed order was ever executed by any firm, or that any sugar stock has been bought or sold by or for Senator Camden at any time during the present session of Congress.

In the course of the investigation, continued as described above, a letter was put in evidence written by Mr. Guillaudeu, a broker doing business in New York, to Mr. A. N. Seip, of Washington. This letter, in addition to making the statement about Senator Camden already considered, stated further that the Hon. James Smith, jr., a Senator from New Jersey, had speculated in sugar stocks during the pendency of the tariff bill. Mr. Guillaudeu, being called as a witness, admitted that he wrote the letters read by Mr. Seip. He stated that the information in regard to Senator Smith came from Battershall, and that the orders given by Senator Smith, according to Battershall's statement, were verbal.

Senator Smith was recalled as a witness and these statements were brought to his attention, and he was questioned in regard to them. He swore that the statements made by Battershall and quoted by Guillaudeu were entirely false, and that he had never, at any time, bought any stock from Washington, nor had he bought any sugar stocks during the pendency of the present tariff bill in the Senate, and that he had never known or seen Battershall.

Senator Smith reiterated his former testimony, and swore that he had never bought or sold sugar stocks during the pendency of the present tariff bill.

As to the fourth instruction to your committee, contained in the said resolution of the Senate, and above quoted, they report that no "charge or charges have been filed before them alleging that the action of any Senator has been corruptly or improperly influenced in the consideration of said bill, or that any attempt has been made to so influence legislation."

All the testimony taken by the committee is submitted as a part of this report

GEO. GRAY.
WILLIAM LINDSAY.
H. C. LODGE.
C. K. DAVIS.
WM. V. ALLEN.

ADDITIONAL VIEWS OF MR. LODGE AND MR. DAVIS.

Three questions were involved in the resolutions which created the committee to investigate the charges of bribery against certain Senators. The first was that relating to the alleged attempts to bribe Senators Hunton and Kyle, and upon that branch of the inquiry the committee has already reported.

The second question was in reference to the speculations of Senators in the certificates of the American Sugar Refining Company during the pendency of the present tariff bill, and upon that the committee now reports without division of opinion.

The third question related to the influence of the sugar trust, so called, on the making of the sugar schedule as it now stands in the tariff bill. As to this third question the undersigned desire to submit their views as follows:

No evidence has been submitted to the committee which proves that the sugar schedule was made up in order to fulfill obligations to the sugar trust for campaign contributions. All of the witnesses have denied in the most explicit manner that such obligations existed or played any part in the construction of the sugar schedule, but the undersigned feel that it is their duty to point out how that schedule was finally made.

We will state, first, certain admitted facts. The sugar schedule was made and reported to the Senate by the Democratic members of the Finance Committee. The Senators composing the Democratic majority of that committee are, therefore, publicly responsible for the schedule. It is also admitted, and it is proved by the sworn testimony of every witness called, that the present form of the schedule was that desired by the representatives of the refiners or of the sugar trust. The undersigned believe that it is of interest and importance to the public that the steps, so far as they are proved by the testimony herewith submitted, by which this schedule was formed and reported by the Finance Committee should be succinctly stated without going beyond the sworn testimony.

There were three sets of interests or opinions involved in the settlement of this sugar question. First were those who had no local or pecuniary interest in the matter whatever, but who believed, as a general proposition, that all sugars should come into this country free of duty; second were the producers of raw sugar in this country, who desired a protective duty for their industry; third were the refiners, who desired a protective duty for their industry, which was the making of refined sugar. When the bill came from the House it was in conformity with the first of these views, that is, it let all sugars into the country free of duty. It, therefore, encountered the opposition both of those who represented the producers and those who represented the refiners and it soon became evident that no bill could pass the Senate which did not give some protection to both these interests.

In the first report of the tariff bill this fact was made apparent by a schedule which provided for a graded specific duty on sugars, raw and refined. This schedule, however, while reasonably satisfactory to the

producers, was very unsatisfactory to the refiners, and the contest over the schedule assumed a new form. It was admitted that there must be some duty on sugars, and the question which now arose was, what kind of a duty? Here the producers and the refiners came into conflict. The producers favored the specific duty as first reported. The refiners favored the ad valorem duty, and this latter principle is the one embodied in the tariff bill as it now stands in regard to raw sugars. All the witnesses who were questioned testified, without exception, to the fact that the producers demanded and desired a specific duty while the refiners demanded ad valorem rates. The point of interest is to learn how the specific duties were abandoned and ad valorem duties substituted for them.

It appears in the testimony that the representatives of the sugar trust, Mr. Havemeyer, the president of the company; Mr. Searles, its treasurer; Mr. Henry R. Reed, representing the Boston refiners; Mr. Cord Meyer, and Mr. H. L. Terrell were in Washington more or less constantly after the passage of the tariff bill through the House, and that they all urged the adoption of an ad valorem schedule. It appears, also, from the testimony that these representatives of the sugar trust presented their views fully to members of the Finance Committee, and, of necessity, did so privately, because public hearings as to the various industries involved in the tariff had been refused.

It also appears in the testimony that these representatives of the sugar trust saw certain other Senators more or less frequently on the subject of their interests, and these Senators were in all cases the same. They also saw the Secretary of the Treasury, who testified that he had always believed in ad valorem duties. The Senators not members of the Finance Committee, to whom the representatives of the trust presented their arguments, were Senator Brice, of Ohio; Senator Gorman, of Maryland; Senators Hill and Murphy, of New York; Senators Smith and McPherson, of New Jersey; Senators White and Caffery, of Louisiana; and Senator Camden, of West Virginia. Various meetings, it appears by the testimony, were held to discuss the sugar schedule between the representatives of the trust and these Senators who have been named.

After the tariff bill had been reported a conference was held by all the Democratic Senators, and it was then decided, as appears by the testimony, that the tariff bill as first reported must be so changed as to command the votes of 43 Democratic Senators. The change in the sugar schedule from specific to ad valorem rates was made by the Finance Committee after this period, and as the result of this conference.

It appears by the testimony of Senator Vest that after said conference Senator Brice, of Ohio, Senator Gorman, of Maryland, Senator Smith, of New Jersey, Senator Hill, of New York, and Senators White and Caffery, of Louisiana, came to the rooms of the Finance Committee in regard to the sugar schedule. Senator Vest testified that Senator Gorman urged a duty of 40 per cent ad valorem and one-quarter of a cent a pound differential in favor of refined sugars as the proper schedule. This was opposed by the Senators from Louisiana, representing the producers as against the refiners of sugar. Senator Vest further testified that he then stated to all these Senators that he had supposed that they were agreed upon a sugar schedule, but as they were not he saw no use at that time in continuing the discussion before the committee, and that meeting thereupon came to an end. Afterward the specific schedule was changed by the Finance Committee and

was reported as it now stands, with a 40 per cent ad valorem duty and an eighth of a cent per pound differential.

It was in this way, according to the evidence before the committee of investigation, that the sugar schedule was made up and that the form of duties advocated by the sugar trust was put in the bill to replace the specific form advocated by the producers.

All the witnesses stated that in all these conferences and discussions nothing was presented except the ordinary arguments offered by any industry in regard to its interests in a tariff bill, but the undersigned feel that the American Sugar Refining Company occupies a very different position, not only in the public estimation, but as a matter of fact, from that of any other industry in the country. It is a very rich corporation with an enormous interest in tariff legislation. It is a matter of complete indifference to the trust what duties are levied upon sugar so long as the form is ad valorem and a sufficient differential is given in favor of refined sugar.

The sugar trust, by the evidence of its president and treasurer, has contributed freely to the State and city campaign funds of both parties and these contributions were made in years in which national elections were also held. This is a thoroughly corrupt form of campaign contributions, for such contributions, being given to two opposing parties, are not for the purpose of promoting certain political principles, but to establish an obligation to the giver on the part of whichever party comes into power. The trust does not give to political parties for the promotion of political principles in which it believes, but for the protection of its own interests, as appears by the same testimony. The fact that it gives to both political parties is sufficient proof of the purposes of its contributions and of their dangerous nature.

For these reasons the undersigned have felt it important to lay before the Senate and the country the fact that the sugar schedule, as it now stands, is, according to the testimony, in the form desired by the sugar trust, and to point out also the methods by which the sugar trust reached what it desired and obtained a substantial victory.

H. C. LODGE.

C. K. DAVIS.

ADDITIONAL VIEWS OF MR. ALLEN.

In view of the fact that the report of the committee, in which I concur, does not set forth the facts in this case as fully as I think they should be stated, I have deemed it proper to file an additional report.

The resolution, it will be observed, requires us—

1. To investigate and report whether the charge of an attempt to bribe Senators Hunton and Kyle is true.

2. To inquire, further, whether any contributions have been made by the sugar trust, or any person acting therewith, to any political party for campaign or election purposes, or to secure or defeat legislation; and,

3. Whether any Senator has been, or is, speculating in what are commonly known as sugar stocks during the consideration of the tariff bill now before the Senate.

I have to say that, so far as the charge against Senators Hunton and Kyle is concerned, there is no evidence to sustain it. These gentlemen stand entirely acquitted, and I will dismiss this branch of the case from further consideration, inasmuch as we have heretofore fully reported thereon.

Regarding the second proposition I have to say that the testimony shows to my mind quite conclusively that contributions were made by the sugar trust to both the Republican and Democratic parties for campaign purposes. The testimony of Henry O. and Theodore Havemeyer and John E. Searles leaves no doubt of the fact that the sugar trust in the State of New York, in 1892, contributed money to the Democratic party for campaign purposes, and at the same time, and for the same purpose, contributed money to the Republican party in the State of Massachusetts. It is true that these witnesses testified that their contributions were made for local and State purposes; but there is no doubt in my mind that the money went into the general campaign fund of those States, and was used as much for national as for State and local purposes.

The evidence further discloses that the books of the American Sugar Refining Company contain an accurate account of the amount of these contributions, or at least sufficient data from which the amount can be accurately ascertained. But the witnesses in each instance refused to produce the books or to disclose the amounts of such contributions. I think the American Sugar Refining Company, popularly and more properly known as the American Sugar Trust, has been in the habit of contributing money to the national campaign fund of both the Democratic and Republican parties through its president, with the expectation, if not the implied promise, that whichever party succeeded to power the interests of the company should be "cared for" by it.

This deduction is fully warranted by the testimony taken by us. That a political party must have money for the purpose of conducting a legitimate campaign, and to be legitimately expended, no one will deny; but that a great corporation that overshadows and threatens the nation should contribute liberally to promote the success of one political party in one State, and the success of another political party in another State at the same general election, I think can not be justified by any standard of morality or process of honest reasoning. Such contribu-

tions can only be prompted by the expectation of the contributor that whichever party shall succeed to the control of the Government will look with some degree of leniency in its legislation upon his interests. A wisely drawn and judicious law looking to a prompt and efficient remedy for this growing evil should be passed by Congress and approved by the President.

The testimony shows that two Senators, the Hon. John R. McPherson, of New Jersey, and the Hon. Matthew S. Quay, of Pennsylvania, did engage in speculating in what are known as sugar stocks or certificates during the pendency of the present tariff bill before the Senate. As their testimony accompanies this report and is self explanatory, I will do no more than to say that I think it fully discloses the necessity for a law prohibiting this practice.

I can add nothing to what is said by the committee regarding that branch of the inquiry affecting the Hon J. N. Camden, a Senator from West Virginia, and the Hon. James Smith, jr., a Senator from New Jersey.

Speaking entirely apart from the facts disclosed in this case, it is impossible for me to conceive of a person who is engaged in discharging the duties of the office of U. S. Senator, and who may at any time be required to consider or vote on a measure affecting the public welfare, to divorce his private interests from those of the public; and if he is compelled to neglect the one or the other I think we have a right to conclude that he will invariably neglect the public interest to preserve his own.

It is a delicate matter for me to speak upon this subject, but a sense of public duty requires me to condemn the practice as unwise and fraught with danger, and one which, if indulged in to any considerable extent by Senators and Representatives, will inevitably lead to the defeat of needed reform in legislation.

There is no evidence whatever connecting Senator Ransom, of North Carolina, with any speculation in sugar or other stocks. The testimony shows that his son, George Ransom, a young man of 22 years of age, and Capt. Barnes, the messenger to the committee of which he is chairman, speculated in a small way in stocks. But the evidence leaves no doubt that this was done entirely without the knowledge or consent of Senator Ransom, and that he never knew of it until within a very few hours of the time he was called to the witness stand. He is fully exonerated from either engaging in speculations or having knowledge that his son and Capt. Barnes were doing so.

The evidence does not show that the sugar trust had any direct influence in procuring the presentation to the Senate of the committee amendment to the sugar schedule, although I think that schedule in so far as it prescribes an ad valorem system of taxation is entirely satisfactory to the trust. There is nothing in the evidence to show that Secretary Carlisle had any improper interview with any representative of the trust, or that any advice he may have given, or assistance he may have rendered, the Finance Committee was at all improper or out of place.

On the other hand, the evidence discloses that such services as he rendered in the premises were strictly in accordance with a long-prevailing custom of the Treasury Department. He drafted the sugar schedule as presented to the Senate at the request of Senator Jones, of Arkansas, an active member of the subcommittee, and I am well convinced that in what Senator Jones did in the premises he was actuated

by honorable motives, and had no desire to unduly favor the sugar trust in any respect.

I believe it to be due to all of these officers to say that the evidence does not cast a suspicion upon their conduct when viewed in the light of the custom heretofore prevailing in the Treasury Department of transacting this part of the public business.

I am thoroughly convinced, however, that no Senator or Representative should ever permit himself to be approached upon any subject connected with legislation by those representing private or special interest, except on occasions when such persons may be heard by the committee of which he is a member, exactly as they would be heard in a court of justice in a case there pending and to be determined. I know of no more reason why a Senator or Representative should be approached, talked with, and importuned by a person representing a special interest to be affected by legislation than a judge before whom a case is pending and is to be tried should be approached by one of the litigants and the case be privately argued and presented to him out of court.

The place to present all arguments is in the committee room before the committee or a subcommittee. This being done and the committee fully informed, the rule prevailing in courts should be observed.

It is proper to call attention to the reckless and open defiance of the authority of the Senate to require witnesses to answer questions that may be put to them, or make disclosures germane to the subject-matter of investigation. The defiance of our authority by the witnesses Edwards, Shriver, Walker, Chapman, McCartney, the Havemeyers, Searles, and others, demonstrates to me that if the Senate ever expects to arrive at the truth of any matter under investigation by a committee appointed by it, it must promptly take contumacious witnesses in hand and deal with them without delay as they would be dealt with in a court of justice under like circumstances.

To turn such witnesses over to the grand jury of the District of Columbia for indictment and prosecution and not require them to be brought before the bar of the Senate to purge themselves of contempt, and, failing to do so, punish them for a refusal, is a practical abdication of the authority of the Senate and leaves it possible for irresponsible persons, without any risk to themselves, to make serious charges against the integrity of those in authority, and when called on to disclose their knowledge of the facts to hide themselves behind the assertion that there is no authority in the Senate to compel disclosure.

The Senate has ample and undoubted jurisdiction of this matter and has repeatedly asserted it and can punish witnesses for contempt and incarcerate them until they purge themselves thereof; but so long as partisan politics enter into the discussion and consideration of investigations of this character the people can expect such witnesses to escape unpunished, and no one knows this better than the witnesses themselves. Thus it will be seen that under such circumstances investigations of this character eventuate in nothing. There must be a radical reform in this respect before the public can expect Congressional investigations to be of any practical value. Without extending this report, I have to state in conclusion that I think this investigation has demonstrated the necessity for two laws.

First. A law prohibiting speculation by Senators and Representatives in Congress in any class of speculative stocks whose value may be immediately affected by national legislation, and thus remove all temptation from them. When a Senator or Representative is elected and takes his seat he thereby, at least impliedly, agrees with the public

that so long as he holds his office he will abstain from the transaction of any private business that may conflict with the faithful discharge of his public duty. I have introduced a bill into the Senate making such speculation a cause for expulsion from Congress.

Second. A law should be speedily passed which, when a committee reports that a witness duly summoned before it is recalcitrant or refuses to answer germane questions put to him by the committee, will require him to be brought promptly before the bar of the Senate, and there, without delay or unnecessary debate, the Vice-President or presiding officer shall repeat the questions to him, and if he shall then refuse to answer them he shall, by proper resolution, without delay or debate, be placed in confinement until he shall have purged himself of contempt. Unless laws of this character can be enacted and be promptly and in good faith enforced, all Congressional investigations will be failures and fall short of accomplishing any useful or practical purpose.

Respectfully submitted.

WM. V. ALLEN.

**LIST OF REPORTS OF SELECT AND SPECIAL COMMITTEES APPOINTED BY THE
SENATE AND HOUSE OF REPRESENTATIVES, FROM THE FOURTEENTH TO THE
FIFTY-THIRD CONGRESS, INCLUSIVE, IN CASES OF INVESTIGATIONS.**

The following lists of reports of select and special committees of the Senate and House of Representatives, in cases of investigations from the Fourteenth to the Fifty-third Congress, inclusive, are given as a matter of convenient reference, for the reason that in many of said reports, appear discussions of the question of the power of the Senate or House of Representatives, or committees thereof, to compel witnesses to answer certain questions propounded. It has been found impossible, however, for want of time to go through these various reports and select out and digest all of such cases.

The said lists are taken from a compilation made by T. H. McKee, clerk in the document room of the Senate, made under authority of the joint resolution approved July 29, 1886 (first session Forty-ninth Congress), brought down to the Forty-eighth Congress, inclusive. Some errors have been corrected, and the lists brought down so as to include the present (Fifty-third) Congress. It is not now claimed to be complete or perfect, but is believed to be substantially so. It is incorporated herein as an aid to those desirous of further investigating the question as to the possession by the Senate and House of Representatives of the powers stated.

SENATE.

Subject.	Report.	Congress.	Session.
Alexandria, Va., military management of the city in 1864: By Mr. Chandler, of Michigan	54	38	1
Armory, United States at Harper's Ferry, Va., destruction of, in 1861: By Mr. Hale, of New Hampshire	37	37	2
Army of the Potomac, 1861-62, by Committee on Conduct of War (testimony): By Mr. Wade	¹ 108	37	3
Army of the Potomac, and battle of Petersburg, 1864 (testimony): By Mr. Wade	142	38	2
Attempts at bribery, investigation of, in connection with tariff act of August 15, 1894: By Mr. Gray	606	53	2
Bank's expedition, chartering vessels for: By Mr. Morrill, of Maine	75	37	3
By Mr. Grimes	84	37	3
Bribery, attempts at. (See Attempts at Bribery.)			
Bull Run and Balls Bluff, battles of, in 1861 (testimony): By Mr. Wade	² 108	37	3
Clayton, Powell (a Senator from Arkansas) charges against, 1873 (testimony): By Mr. Morrill, of Maine	232	42	2
By Mr. Wright	512	42	3
By Mr. Norwood (views of minority)	512	42	3
Credit Mobilier of America, 1873: By Mr. Morrill, of Maine	519	42	3
Crow Indians, condition of: By Mr. Dawes	283	48	1
Department of the West in 1861, by Committee on Conduct of War (testimony): By Mr. Wade	³ 108	37	3
Disorder in United States Senate, April 17, 1850: By Mr. Pearce	170	31	1
Election in Louisiana: By Mr. Allison	867	45	3
Election outrages in Mississippi in 1883: By Mr. Hoar	512	48	1
By Mr. Saulsbury (views of the minority)	512	48	1
Emigrant ships, protection of health and lives of passengers on board of: By Mr. James	386	33	1

¹ Parts 1 and 2.

² Part 2.

³ Part 3.

SENATE—Continued.

Subject.	Report.	Congress.	Session.
Florida expedition in 1864: By Mr. Wade	47	38	1
Fort Pillow massacre, 1864: By Mr. Wade	63	38	1
Fraud and bribery, prosecution of claims before Congress: By Mr. Borland	1	33	4
Fredericksburg, Va., investigation by Committee on Conduct of War of battle of (testimony): By Mr. Wade	71	37	3
Harpers Ferry Armory, seizure of, in 1859 (testimony): By Mr. Mason	278	36	1
By Mr. Doolittle (views of minority)	278	36	2
Hatch, Davis, treatment by Dominican Republic of (testimony): By Mr. Howard	234	41	2
By Mr. Schurz (views of minority)	234	41	2
Heavy ordnance, by Committee on Conduct of War (testimony): By Mr. Wade	121	38	2
Kuklux, in late insurrectionary States, 1871: By Mr. Scott	6 7 15	42 42 42	2 2 2
Mine explosion before Petersburg, 1864: By Mr. Wade	114	38	2
Naval supplies, purchase of, alleged frauds in: By Mr. Hale, of New Hampshire	99	38	1
By Mr. Buckalew (views)	99	38	1
By Mr. Doolittle (views)	99	38	1
Negro emigration from Southern States, causes of: By Mr. Vance	693	46	2
By Mr. Stevenson (views of minority)	¹ 693	46	2
Norfolk Navy-Yard, destruction of, in 1861 (testimony): By Mr. Hale, of New Hampshire	37	37	2
Ordnance sales, 1871: By Mr. Carpenter	183	42	2
By Mr. Stevenson (views of minority)	183	42	2
Outrages upon United States soldiers killed in battle of Bull Run in 1861 (testimony): By Mr. Wade	41	37	2
Patent Office, condition of: By Mr. Ruggles	338	24	1
Pensacola Navy-Yard, surrender of, in 1861 (testimony): By Mr. Hale	37	37	2
Pinkerton Detective Force, investigation as to conflict between, and workmen at Homestead, Pa.: By Mr. Hansbrough	1105	2	1
Poindexter, Hon. George (presiding officer of the Senate), published articles bearing upon attempted assassination of President Jackson: By Mr. Smith	148	23	2
Pomeroy, S. C., charge of bribery in Kansas Senatorial election, 1872-73: By Mr. Frelinghuysen	523	42	3
By Mr. Vickers (views)	523	42	3
By Mr. Thurman (views)	523	42	3
Ponca and Northern Cheyenne Indians: By Mr. Dawes	670	46	3
By Mr. Kirkwood (views of minority)	670	46	2
Post-Office Department, management of, in 1831: By Mr. Clayton	73	21	2
Senate, statements published in Washington Daily Times, reflecting upon character of United States: By Mr. Benton	222	29	1
Ruggles, John (a Senator from Maine): By Mr. White	377	25	2
Sioux Indians, condition of: By Mr. Dawes	283	48	1
Soldiers killed in battle of Bull Run in 1861, outrages upon, by rebels (testimony): By Mr. Wade	41	37	2
Sumner, Hon. Charles, assault by Mr. Brooks, of South Carolina, in 1856, upon: By Mr. Pearce	191	34	1
Tariff act of August 15, 1894, attempts at bribery in connection with: By Mr. Gray	606	53	2
Traffic with rebels in Texas: By Mr. Thurman	377	41	3
Treasury Department, books and accounts of, in 1879: / By Mr. Davis, of West Virginia	539	46	2
Treatment of prisoners of war in Southern prisons in 1864: By Mr. Wade	68	38	1
Treaty of Washington, how and by whom made known, 1871: By Mr. Carpenter	5	42	(²)

¹ Parts 1, 2, and 3.² Special session.

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Alabama, condition of affairs in.....	262	43	2
Amelia Island, introduction of slavery from.....	46	15	1
Ames, Oakes, alleged bribery by.....	77	42	3
Anderson, Hon. Lucien, of charges made against.....	29	38	2
Armistad case, falsified printing in.....	51	26	2
Army, disbursements for pay and subsistence since March 4, 1815.....	72	16	1
Ashley, Hon. J. M., official conduct in procuring certain Government appointments and contracts.....	47	37	3
Assault by—			
Brooks, Preston S., upon Hon. Charles Sumner.....	182	34	1
Bynum, Jesse A., upon Rice Garland.....	488	26	1
Codd, Robert, upon Henry G. Wheeler.....	762	24	1
Field, A. P., upon Hon. W. D. Kelley.....	10	38	2
Houston, Samuel, upon Hon. William Stanberry.....	447	22	1
Lane, J. F., upon Hon. John Ewing.....	135	23	2
McMullen, Fayette, upon Amos P. Granger.....	1	34	2
Rousseau, Hon. Lovell H., upon Josiah B. Grinnell.....	90	36	1
Russell, Jarvis, upon President's private secretary.....	¹ 260	20	1
Bailey, John, Chief Clerk House of Representatives, charges against.....	2003	47	2
Bank of Pennsylvania, purchase of property by General Government belonging to.....	541	35	1
Bank of United States, books and management of.....	¹ 460	22	1
Banks of deposit.....	¹ 193	24	2
Barron, Commodore James, commutation pay for naval services of.....	489	31	1
Bayly, Hon. T. H., charges made by B. E. Green against.....	354	33	1
Do.....	142	33	2
Bills, House of Representatives, alteration in.....	351	33	1
Do.....	352	33	1
Do.....	122	33	2
Blair, Hon. F. P., jr., charges against.....	61	38	1
Boynton, H. V., charges against.....	¹ 112	48	1
Bonds of United States, false certificate as to destruction of.....	23	40	2
Books, abstraction of by seceding Members of Congress from House library.....	90	36	2
Bounties, delay in payment of.....	5	40	2
Bounty lands, execution of act September 28, 1850, granting.....	4	31	2
Breach of privilege, floor House of Representatives by President of United States.....	26	39	2
Brooklyn, N. Y., election frauds in.....	218	44	2
Calhoun, J. C., participation in War Department contracts while Secretary of War.....	79	19	2
Cilley, Hon. Jonathan, cause and circumstances attending death of.....	825	25	2
Cipher telegrams, 1876.....	140	45	3
Clerk of House, investigating accounts of.....	542	35	1
Do.....	188	35	2
Clerk of House, Chief (<i>see</i> John Bailey).....	2003	47	2
Cobb, Hon. Howell, charges by Hon. Preston King against.....	218	31	1
Colt patent, corrupt measures used to extend.....	353	33	1
Commissioner of Patents, charges of fraud in office of.....	26	38	2
Commissioner of Pensions, regulations concerning bounty lands.....	4	31	2
Committee on Accounts, charges against chairman of.....	185	35	2
Commonwealth Bank of Massachusetts, settlement of claim of United States against.....	678	27	2
Contingent expenses of House of Representatives.....	30	27	2
Corrupt combinations, by certain Members of Congress.....	243	34	3
Corwin, Hon. Thomas, connection with the Gardiner claim.....	1	32	2
Covode, management of executive department.....	648	36	1
Crawford, Hon. George W., relation to the claim of George Galphin.....	334	31	1
Crédit Mobilier, investigation, report and testimony taken in (No. 1, Poland report).....	77	42	3
Crédit Mobilier, investigation (No. 2, Wilson report).....	78	42	3
Cullom, William, Clerk of House of Representatives.....	542	35	1
Do.....	188	35	2
District of Columbia:			
Government of.....	647	43	1
Real estate pool in.....	242	44	1
Do.....	789	44	1
Improper use of police force in.....	189	44	2
Donnelly, Ignatius, charges made against.....	48	40	2
Election frauds in New York.....	31	40	3
Do.....	41	40	3
Do.....	140	45	3
English, Hon. William H., charges against.....	² 136	48	1
Elliott, Commodore Jesse, charges against.....	295	25	3
Executive department, management of.....	648	36	1
Ewing, G. W. and W. G., payment of claims against Pottawatomie Indians made by.....	489	31	1
Florida election in 1876.....	143	44	2
Fort Pillow massacre, testimony taken of.....	65	38	1
Freedmen's Bank, management.....	¹ 502	44	1

¹ Views of minority.

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Fry, Provost-Marshal-General, charges by Roscoe Conkling against.....	93	39	1
Gales and Seaton, charges against.....	76	17	2
Galphin, George, investigation of conduct of Secretary of War in relation to claim of.....	334	31	1
Gardiner claim, investigation of the, connection of Hon. Thomas Corwin with.....	1	32	2
Government contracts, frauds in.....	49	37	3
Do.....	50	37	3
Grinnell, Hon. Josiah B., assault upon.....	90	39	1
House of Representatives, ventilation of.....	19	40	3
Do.....	119	45	2
Do.....	116	45	3
Impeachment of President Johnson, raising money to carry on.....	75	40	2
Importation of foreign labor, to investigate.....	3792	50	2
Indian Affairs, charges against Commissioner of.....	104	30	1
Indian contracts, fraudulent assignment by Secretary of War.....	502	22	1
Internal revenue, examination of frauds.....	24	39	2
Ironclads, fraudulent sale by Navy Department of.....	64	40	2
Jersey City, election frauds in.....	218	44	2
Kilbourn, Hallet, refusal to obey orders of House of Representatives.....	242	44	1
Do.....	789	44	1
Labor, importation of foreign.....	3792	50	2
Labor troubles in 1886, Curtin committee.....	4174	49	2
Labor troubles at Homestead, Pa. (See Pinkerton Detective Force.)			
Lawrence, P. K., charges against.....	272	25	3
Library of House of Representatives, abstraction of books from.....	90	36	2
Library (of Congress) building, investigation as to cause of delay in construction of.....	3795	50	2
Louisiana:			
Condition of affairs in.....	16	39	2
Elections held in 1876 in.....	100	44	2
Do.....	156	44	2
Federal offices in.....	816	44	1
Maps and charts, frauds in engraving and printing of.....	305	28	1
Members of Congress, corrupt combinations of.....	243	34	3
Memphis riots, origin of.....	101	39	1
Minnesota land bill, alteration in text.....	352	33	1
Do.....	122	33	2
Naval contracts, inquiry into.....	184	35	2
Navy Department:			
Fraudulent sale of ironclads by.....	64	40	2
Administration of affairs in.....	80	42	2
New Orleans, La.:			
Management of affairs in custom-house at.....	25	39	2
Do.....	816	44	1
Riot of July 30, 1866, at.....	16	39	2
New York, election frauds in.....	218	44	2
New York City post-office, tampering with mails in.....	138	44	2
New York hotel fund, creation of.....	1331	36	1
Ocean mail steamers, disbursement of money appropriated for.....	281	33	1
Paine, E. A., charges against.....	29	38	1
Pan-electric Telephone Company, charges against.....	3142	49	2
Patent Office, charges against management of.....	48	37	3
Do.....	26	38	2
Pay Department, frauds in payment of bounties to colored troops.....	83	40	2
Philadelphia, election frauds of.....	218	44	2
Pinkerton Detective force, investigation as to conflict between, and workmen at Homestead, Pa.:			
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Post-Office Department, condition of affairs in.....	65	16	2
Do.....	69	16	2
Do.....	77	44	1
President of United States, presence on floor of House of.....	26	39	2
Public Printer, investigating accounts of.....	189	35	2
Randall, Hon. Samuel J., certain charges against.....	139	45	3
Real-estate pool in District of Columbia.....	242	44	1
Do.....	789	44	1
Reid, Whitelaw, arrest in District of Columbia of.....	273	43	2
Safe burglary in District of Columbia.....	785	43	1
Searing, John A., charges against.....	185	35	2
Secretary of Navy, certain charges against.....	80	42	2
Secretary of State, official misconduct of Hon. Daniel Webster as.....	684	29	1
Secretary of War:			
In assigning contract for Indians.....	502	22	1
Relation of, to claim of George Galphin.....	334	31	1
Seizure of forts and arsenals by seceding States.....	91	36	2
Silver pool, investigation of the.....	4006	51	2
Slaves, introduction of, from Amelia Island.....	46	15	1

¹ Parts 1 and 2.

HOUSE OF REPRESENTATIVES—Continued.

Subject.	Report.	Congress.	Session.
Smithsonian Institution, management of affairs in.....	141	33	2
South Carolina:			
Murder of Union soldiers in.....	23	39	2
Elections held in 1876 in.....	175	44	2
Stamps, loss in office in subtreasury, New York City.....	70	42	3
Stephens, William, official conduct of.....	136	15	2
Sugar stocks, speculation in, during pendency of tariff act of August 15, 1894.....	606	53	2
Sylvester, Henry H., removal from Pension Office of.....	945	27	2
Tariff act of 1857, corrupt use of money in securing passage of.....	414	35	1
Treasury Department, investigation of charges against.....	140	38	1
Van Ness, William P., official conduct of.....	136	15	2
Ventilation, Hall of House.....	19	40	3
Do.....	119	45	2
Do.....	116	45	3
Vicksburg, Miss., recent troubles at.....	265	43	2
Webster, Hon. Daniel, official misconduct as Secretary of State.....	684	29	1
Wetherill, Charles M., inquiry as to absence from his Department.....	35	38	1
Willels Point, N. Y., purchase of.....	549	35	1
Woolley, Charles W., conduct of, during impeachment of President Johnson.....	44	40	2
Wolcott, John W., a contumacious witness in investigation of tariff act of March 3, 1857.....	414	35	1

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